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THE
LANDS CLAUSES ACTS,
WITH
DECISIONS, FORMS
AND
TABLES OF COSTS.

By ARTHUR JEPSON,
OF LINCOLN'S INN, ESQ., BARRISTER-AT-LAW.

SECOND EDITION

BY

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PREFACE.



THIS work was originally intended, as stated by the Author in his Preface, to be merely a collection of decisions upon the Lands Clauses Consolidation Acts, and not an elaborate treatise. In preparing a Second Edition I have retained the original form of the work, but I have found it advisable to rearrange the decisions under the various sections, and in the case of the Notes to the more important sections I have attempted, by introducing suitable sub-divisions, to facilitate reference to the authorities. Only in this way did it seem possible to give a coherent view of the law which has accumulated round such sections, for instance, as Section 68 (Injurious Affecting Lands), Section 69 (Application of Purchase Money), or Section 80 (Costs where Money is paid into Court). Moreover, the statement of the cases has been largely altered, those of lesser importance being abridged and numerous new ones added, so that in the result the work has been practically re-written.

I have also prefaced the Acts with an Introduction, which is intended to be a general guide to their provisions and to the leading decisions; and this, with the Table of Proceedings, which also is new, will, it is hoped, increase the utility of the work.

The authorities cited are brought down to the present month, and references to the various current series of Reports have been added to the Table of Cases, the dates of the decisions being inserted in the references in the Text.

The Forms have been revised, and the Precedents of Costs, which were formerly incorporated from the late Mr. Scott's book on Costs, are now taken with some slight variations from the Second Edition of Mr. Johnson's "Bills of Costs."

JOHN M. LIGHTWOOD.

LINCOLN'S INN,

October, 1900.

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TABLE OF PROCEEDINGS UNDER THE LANDS CLAUSES ACTS.

I.—Purchase by Agreement.

If vendor is a limited owner or under disability, the agreed price to be tested by valuation of surveyors under sect. 9. Declaration of correctness to be annexed to valuation (*see* p. 79 ; Forms 3, 4).

II.—Compulsory Purchase.

Subscription of capital to be certified by two justices (p. 91 ; Form 14).

Notice to treat (p. 98 ; Form 15).

If notice to treat is for part of a house, &c., the landowner can give counter-notice to take the whole (p. 273 ; Form 22).

If immediate entry desired, deposit to be made and bond with sureties given under sect. 85 (p. 261 ; Forms 63—65).

Landowner to give notice of claim and (if so desired) of ascertainment of compensation by arbitration (pp. 108, 110 ; Form 16) ; unless claim is 50% or under, when it is settled by two justices (p. 110).

ARBITRATION.

Offer of compensation by company, the amount of the offer determining the incidence of costs (pp. 130, 132).

After twenty-one days from notice to treat, if parties have not agreed, arbitration proceeds (p. 108).

Negotiations for appointment of single arbitrator (p. 123). These failing, appointment by each party of an arbitrator, with notice of the appointment to the other. If necessary, request by either party to the other to appoint an arbitrator (p. 123 ; Forms 31—36).

Appointment of umpire by arbitrators, not later than three months from appointment of arbitrators (p. 125 ; Form 41).

In default, appointment of umpire by Board of Trade (p. 126).

Declaration of fidelity to be made by arbitrators and umpire (p. 129).

Appointment by arbitrators of time and place of reference (Form 43).

Award to be made within twenty-one days of appointment of arbitrators or within extended time agreed on by arbitrators, such time not exceeding three months (pp. 111, 128).

If arbitrators fail to make award, umpire to make award within three months of reference devolving upon him (p. 122).

INQUIRY BEFORE JURY.

If landowner does not elect for arbitration, company give ten days' notice of summoning a jury, with offer of compensation. The amount offered in this notice determines the incidence of costs (pp. 139, 151 ; Form 50).

Either party may (in railway cases) elect to have the trial taken in the High Court (p. 141).

Company issue warrant to sheriff to summon a jury (p. 140 ; Form 52).

Nomination of jury (Form 55).

Company to give ten days' notice to landowner of time and place of inquiry (p. 147 ; Form 57).

ASCERTAINMENT OF COMPENSATION BY SURVEYOR.

If landowner is abroad, or cannot be found, or does not appear on the inquiry before a jury, two justices nominate a surveyor to determine compensation (pp. 157, 158 ; Form 58).

Surveyor to sign declaration of fidelity (p. 159).

Subsequent ascertainment of the compensation by arbitration if desired by a landowner who was abroad or could not be found (p. 161).

ASCERTAINMENT OF COMPENSATION BY JUSTICES.

Where claim is 50*l.* or under (*vide supra*).

In case of tenancies not exceeding yearly tenancies, company serve demand of possession (p. 315 ; Form 25).

Summons before police magistrate or two justices to determine compensation (p. 315 ; Form 61).

III.—Injurious affecting Lands.

Notice of claim, with election (if so desired) for arbitration.

Offer of compensation by company.

Twenty-one days allowed for negotiation. If no agreement, arbitration proceeds as above.

If claimant does not choose arbitration, company must within twenty-one days of notice of claim issue warrant for jury: otherwise they are liable for full amount claimed (pp. 164, 182).

Company give claimant ten days' notice of the time and place of the inquiry as above, and the offer of compensation (to determine incidence of costs) may be made in this notice (pp. 152, 180).

IV.—Payment into Court and Conveyance.

If landowner has a limited interest or is under disability, the purchase money (200*l.* or upwards), whether on a purchase by agreement (pp. 79, 183, 208) or on a compulsory purchase, is paid into Court (p. 183). If above 20*l.* but under 200*l.*, it is paid into Court, or (with approval of company) to trustees (p. 206). If 20*l.* or under, to the vendor (p. 207).

If landowner refuses to convey or fails to make a title; and also if he is abroad, or cannot be found, or fails to appear on an inquiry before a jury, the company may pay the purchase money into Court (pp. 215, 216).

In the above cases a vendor competent to convey (*see* p. 74) executes a conveyance to the company.

If the company cannot get a conveyance, or are not satisfied with the title, they vest the land in themselves by deed poll, and such deed will, in general, pass to the company all the interest with reference to which the compensation was determined (pp. 214, 217).

For procedure on acquisition of copyhold lands, common lands, and lands subject to mortgages and rent-charges; where small pieces of land are severed, or interests have by mistake been omitted to be purchased; and on sale of superfluous lands, *see* sects. 93 *et seq.*

LANDS CLAUSES ACTS.

INTRODUCTION.

THE Lands Clauses Consolidation Act, 1845 (18 & 19 Vict. c. 18), by the preamble, now repealed, recited that it was expedient to comprise in one general Act the usual statutory provisions relative to the acquisition of lands required for undertakings or works of a public nature, and to the compensation to be made for the same; and sect. 1 applies the Act to every undertaking authorized by any subsequent Act which authorizes the purchase or taking of lands for the undertaking, and all the clauses of the L. C. A. are incorporated with the subsequent Act save so far as they are expressly varied or excepted. The L. C. A. consequently applies only to undertakings of a public nature (*Re Sion College*, 1887, 57 L. T. 743); and the undertaking must be authorized by an Act passed after 8 May, 1845; though if the provisions of an earlier Act are by reference imported into an Act subsequent to that date, this is enough, and the L. C. A. is incorporated in such provisions (*Re Wood's Estate*, 1886, 31 C. D. 607); moreover, if an extension Act is passed after 1845, its passing is assumed to be upon the terms that the L. C. A. is incorporated in the original Act (*L. & Y. Ry. Co. v. Evans*, 1851, 15 Beav. p. 327). If the special Act contains provisions of its own upon any subject, this has the effect of excluding the corresponding provisions of the

Application
of L. C. A.
1845.

L. C. A., but if the provisions only regulate a portion of the subject, the L. C. A. is not excluded as to the rest. (*Re Westminster Estate of St. Sepulchre*, 1864, 4 D. J. & S. 232.)

Arrangement
of Act.

The sections of the L. C. A. are arranged according to subjects in the following order. Most of the groups of sections have distinctive headings prefixed to them in the Act:—

Group I. ss. 2—5.—Construction and incorporation of Act.

II. ss. 6—15.—Purchase of lands by agreement.

III. ss. 16—68.—Purchase of lands otherwise than by agreement.

IV. ss. 69—80.—Application of compensation.

V. ss. 81—83.—Conveyances.

VI. ss. 84—91.—Entry on lands.

VII. s. 92.—Sale of part of premises.

VIII. ss. 93, 94.—Intersected lands.

IX. ss. 95—98.—Copyholds.

X. ss. 99—107.—Common lands.

XI. ss. 108—114.—Lands in mortgage.

XII. ss. 115—118.—Rent charges.

XIII. ss. 119—122.—Leases.

XIV. s. 123.—Limit of time for compulsory purchase.

XV. ss. 124—126.—Interests omitted to be purchased.

XVI. ss. 127—132.—Sale of superfluous lands.

XVII. s. 133.—Liability for land tax and poor rate.

XVIII. s. 134.—Service of notices, &c. on promoters.

XIX. s. 135.—Tender of amends for irregularity.

XX. ss. 136—149.—Recovery of penalties.

XXI. ss. 150, 151.—Access to special Act.

XXII. s. 152.—Extent of Act.

The following is a summary of the points arising under these various groups of sections. Summary of
L. C. A.

**Group I. ss. 2—5.—Construction and incorporation of
L. C. A.**

By sect. 3 “lands” is defined to extend to “lands, Easements.
tenements and hereditaments of any tenure,” and consequently it can include easements, though an easement cannot be taken under the Act, unless express power in that behalf is conferred by the special Act (*Hill v. Mid. Ry. Co.*, 1882, 21 C. D. 143).

It seems that the headings prefixed to groups of sections can be taken as a guide to all the sections in the group Incorporation
by reference
to headings.
(*Eastern Counties Ry. Co. v. Marriage*, 1860, 9 H. L. C. 32). If the special Act excludes a group by reference to the heading, this applies to all the sections in the group, although some do not relate exclusively to the subject-matter of the group (*Ferrar v. Commissioners of Sewers*, 1869, L. R. 4 Ex. 227); but pertinent sections in other groups are not excluded (*Reg. v. Lord Mayor of London*, 1867, L. R. 2 Q. B. 292).

Group II. ss. 6—15.—Purchase of lands by agreement.

The promoters may purchase by agreement either from Purchase by
agreement.
absolute owners or from persons under disability (s. 6); and a company is bound to carry out an agreement entered into before incorporation, where it takes the benefit of the agreement (*Gooday v. Colchester, &c. Ry. Co.*, 1852, 17 Beav. 132); but the power of purchase only arises in respect of lands which are authorized by the special Act to be taken, and which are required for the purposes of that Act (*infra*, p. 5).

The consideration for the purchase may be either a lump Consideration
for purchase.
sum or an annual rent charge, and the agreement should

also provide for any accommodation works that may become necessary unless the company will be under statutory liability in this respect (*Skerratt v. N. Staff. Ry. Co.*, 1848, 5 Ry. Cas. 166). If the amount payable for purchase money and damages is referred to arbitration, the award does not preclude further compensation for future unforeseen damage (*L. & Y. Ry. Co. v. Evans*, 1851, 15 Beav. 322). In case of persons under disability the compensation must be ascertained in accordance with sect. 9 and paid into Court.

Entry on
lands.

The company cannot enter before payment, except under sect. 85 (*Bygrave v. Metrop. Bd. of Works*, 1886, 32 C. D. 147), unless the agreement contemplates deferred payment (*Bodington v. G. W. Ry. Co.*, 1849, 13 Jur. 144).

Interest on
purchase
money.

After the time fixed for completion the company pays interest on the purchase money and takes the rents, in accordance with the ordinary rule as between vendor and purchaser; but a vendor in possession does not pay an occupation rent (*Leggott v. Met. Ry. Co.*, 1870, 5 Ch. p. 719), unless his occupation is in fact beneficial (*Met. Ry. Co. v. Defries*, 1877, 2 Q. B. D. 387). If the compensation is referred to arbitration, the company do not pay interest from the date of the award, but from the time when a good title is shown, and when they might prudently take possession (*Re Pigott and G. W. Ry. Co.*, 1881, 18 C. D. 146); though, if possession is taken earlier, interest is at once payable (*Rhys v. Dare Valley Ry. Co.*, 1874, 19 Eq. 93).

Enforcing
agreement.

The agreement can be enforced on either side by an action for specific performance (*Eastern Counties Ry. Co. v. Hawkes*, 1855, 5 H. L. C. 331); but a resort by the company to their compulsory powers is taken to be an abandonment of the agreement (*Bedford, &c. Ry. Co. v. Stanley*, 1862, 2 J. & H. 746). The unpaid vendor can work out

his remedy against the company in the ordinary way, and, after he has obtained a declaration of lien, he can enforce it by sale (*Walker v. Ware, &c. Ry. Co.*, 1865, 1 Eq. 195); though until sale he is not entitled to an injunction to prevent the company from using the line (*Munns v. I. of Wight Ry. Co.*, 1870, 5 Ch. 414). If, however, the land is unsaleable, he can obtain an injunction to prevent the company from running trains and from continuing in possession (*Allgood v. Merrybent, &c. Ry. Co.*, 1886, 33 C. D. 571).

Persons with limited interests, persons under disability, and trustees and personal representatives are empowered to sell and convey to the company (s. 7), and also to enfranchise copyholds, and to release or apportion rents, &c. (s. 8), and, under certain restrictions, to sell lands for extraordinary purposes (ss. 13, 14). The purchase money and compensation for injury must be ascertained either as in cases of disputed compensation—*i.e.*, by a jury, by arbitration, or by a surveyor appointed by justices—or by agreement; but if agreed, it must be not less than the valuation of two able practical surveyors, one nominated by each party (s. 9).

The power to sell in consideration of an annual rent charge (s. 10) was by sect. 2 of the L. C. A. 1860, extended to persons under disability. Such rent charges are to be charged on the tolls or rates (s. 11), but it seems that they constitute also a first charge upon the lands sold (*Eyton v. Denbigh, &c. Ry. Co.*, 1869, 7 Eq. 439).

Group III. ss. 16—68.—Purchase of lands otherwise than by agreement.

The company's power to purchase land arises only with respect to lands which are authorized to be taken and which are required for the purposes of the undertaking.

Lands
required.

The authority to take lands depends on the special Act; not upon the preliminary notices and deposited plans (*Re Corp. of Huddersfield and Jacomb*, 1874, 10 Ch. 92). The land must be *bonâ fide* required for the undertaking; it is not sufficient that it is required for a collateral purpose (*Carington v. Wycombe Ry. Co.*, 1868, 3 Ch. 377); though where the lands are not taken for purposes of profit this rule is relaxed (*Rolls v. School Board for London*, 1884, 27 C. D. 639). Upon the question whether the land is required, the evidence of the company's officers is accepted (*Errington v. Metrop. Dist. Ry. Co.*, 1882, 19 C. D. p. 571), though it must be given in sufficient detail to enable the Court to judge of its *bona fides* and value (*Kemp v. S. E. Ry. Co.*, 1872, 7 Ch. 364). The company, after they have acquired the land may use it in any manner which is not an infringement of the rights of other persons, and which is not incompatible with the purposes of the company (*Foster v. L. C. & D. Ry. Co.*, 1895, 1 Q. B. 711).

User of land
by company.

Exercise of
compulsory
powers.

The company are not bound to exercise their compulsory powers (*Yorks. & N. Midland Ry. Co. v. Reg.*, 1852, 1 E. & B. 858), but a contract not to exercise them is void (*Ayr Harbour Trustees v. Oswald*, 1883, 8 App. Cas. p. 634). The powers may be exercised though the object is obtainable otherwise (*Lamb v. N. London Ry. Co.*, 1869, 4 Ch. p. 530), and it is no objection to the exercise of the power that the company gain an incidental benefit which was not contemplated by their special Act (*Sterens v. Metrop. Dist. Ry. Co.*, 1885, 29 C. D. 60).

Subscription
of capital.

The compulsory powers cannot be put in force until the whole of the capital has been subscribed (s. 16); but if this requirement is satisfied, and the company have given notice to treat, they cannot afterwards refuse to proceed on the ground of want of means (*Reg. v. Commissioners of Woods and Forests*, 1850, 15 Q. B. p. 773).

Notice to Treat.

Where the company desire to take land under the powers of their special Act, the first step is to serve a notice to treat under sect. 18 of the L. C. A. This notice states the particulars of the lands required, and demands from the persons on whom it is served particulars of their estate and interest in the land, and of their claims in respect thereof. It states that the company are willing to treat for the purchase of the lands and as to compensation for damage caused by the execution of the works. The notice to treat confers no right upon the company to enter into possession. For this purpose either the compensation money must be ascertained and paid, or proceedings must be taken under sect. 85. The company will be restrained by injunction from unlawful entry (*Perks v. Wycombe Ry. Co.*, 1862, 3 Giff. 662).

Notice to
treat.

Conditions for
entry by
company.

The notice to treat must be served upon all persons having any interest in the lands proposed to be taken, which is the subject of compensation. With respect to current tenancies the company may either take the land at once and compensate the tenants (see s. 121), or, after they have acquired the reversion, they may terminate the tenancies by notice in the ordinary way (*Ex p. Nadin*, 1848, 17 L. J. Ch. 421). Compensation must be paid for any equitable rights existing in the premises (*Birmingham, &c. Land Co. v. L. & N. W. Ry. Co.*, 1888, 40 C. D. 268), but not for mere expectations of extended interest (*R. v. Liverpool, &c. Ry. Co.*, 1836, 4 A. & E. 650). The company are bound, in the absence of special power to the contrary, to take the whole land; they cannot take the sub-soil alone (*Sparrow v. Oxford, &c. Ry. Co.*, 1852, 2 D. M. & G. 94), or an easement (*Pinchin v. London & Blackwall Ry. Co.*, 1854, 5 D. M. & G. 851). Where the land taken is subject to easements (*Duke of Bedford v. Dawson*, 1875, 20 Eq. 353),

Compensation
to be made
for all in-
terests in land.

Entire land to
be taken.

or to restrictive covenants (*Kirby v. Harrogate School Board*, 1896, 1 Ch. 437), these are the subject of compensation under sect. 68.

Lands comprised in notice.

The notice to treat must show with certainty the lands which are to be taken (*Douling v. Pontypool, &c. Ry. Co.*, 1874, 18 Eq. 714); but it does not preclude a second notice to treat for additional land (*Stamps v. Birmingham, &c. Ry. Co.*, 1848, 2 Phil. 673).

Effect of notice.

The date of the notice to treat fixes the time with reference to which the value of the interests taken is to be ascertained (*Re Doyne's Traverses*, 1888, 24 L. R. Ir. 287), and after that date parties are not allowed to alter their position. For interests subsequently created no compensation is payable (*Ex p. Edwards*, 1871, 12 Eq. 389).

No contract till price fixed.

The notice to treat does not, however, constitute a contract. For the parties to be in the position of vendor and purchaser it is further necessary that the price shall be ascertained (*Adams v. London & Blackwall Ry. Co.*, 1850, 2 Mac. & G. p. 132). But after the ascertainment of the price there is a complete contract, of which specific performance will be ordered, without reference to the Statute of Frauds (*Harding v. Met. Ry. Co.*, 1872, 7 Ch. p. 158). It follows that upon the death of the landowner there is no conversion of the land into personalty unless the price has been fixed in his lifetime (*Haynes v. Haynes*, 1861, 1 Dr. & Sm. 426).

Conversion.

Landowner may compel company to proceed.

But though the notice does not constitute a contract, the landowner may compel the company to proceed with the purchase (*Fotherby v. Met. Ry. Co.*, 1866, L. R. 2 C. P. 188); and they are not at liberty to abandon or withdraw the notice (*R. v. Hungerford Market Co.*, 1832, 4 B. & Ad. 327), unless a counter-notice has been served under s. 92 (*King v. Wycombe Ry. Co.*, 1860, 28 Beav. 104).

Assessment of Compensation.

Upon receipt of the notice to treat, the landowner should state the particulars of his claim, and (subject to sect. 9) he may agree upon the amount of compensation. If the parties do not agree, and if the amount claimed does not exceed 50*l.*, it is settled by two justices (ss. 22, 24). If it exceeds 50*l.*, the landowner has the option of having the amount referred to arbitration (ss. 25—37); if not referred to arbitration, it is determined by a jury (ss. 38—57). It is determined by a jury also if, after being referred to arbitration, no award is made by the arbitrators or their umpire for three months.

Modes of
fixing com-
pensation.

This period of three months allowed to the arbitrators for making their award may be extended by consent (*Re Palmer & Met. Ry. Co.*, 1862, 10 W. R. 714), or by the Court (*Re Dare Valley Ry. Co.*, 1869, 4 Ch. 554); and a new period of three months is allowed to the umpire, running from the time when the arbitration devolves upon him (*Skerratt v. N. Staff. Ry. Co.*, 1848, 2 Phil. 475); or, if he is not appointed till after the awarding power of the arbitrators has come to an end, from the date of his appointment (*Re Pullen & Corp. of Liverpool*, 1882, 51 L. J. Q. B. 285). But costs need not be included in the award, and they may be settled after the three months. (*Gould v. Staff. Potteries W. W.*, 1850, 6 Ry. Cas. 568).

Limit of time
for making
award.

The sole function either of an arbitrator or of a jury is to settle the amount of compensation; at this stage no question of the right to compensation can be entertained. If the company deny the claimant's right, they can do so by way of defence when he brings his action to enforce the award or to recover the amount of the verdict (*R. v. L. & N. W. Ry. Co.*, 1854, 3 E. & B. 443; *Brierley Hill Local Board v. Pearsall*, 1884, 9 App. Cas. p. 601). Consequently the Court will not grant an injunction against

Jurisdiction
of tribunal
which assesses
compensation.

proceeding in an arbitration on the ground that the claimant has no title (*London & Blackwall Ry. Co. v. Cross*, 1886, 31 C. D. p. 367), unless some special injury will result (*Farrar v. Cooper*, 1890, 44 C. D. p. 328).

Principles of assessment.

Compensation is payable for the value of the lands taken, and also for damage caused by severance or otherwise to other lands of the same owner which are not taken (ss. 49, 63); and compensation is also given for loss incidental to the taking of the premises, such as loss of goodwill or expenses of removal, provided the damage is not too remote (*Re Clarke & Wandswoorth Board of Works*, 1868, 17 L. T. 549); moreover, ten per cent. is usually added to the value of the land for compulsory purchase. The principles of compensation are the same by whatever tribunal the amount is assessed (*Holt v. Gas Light & Coke Co.*, 1872, L. R. 7 Q. B. p. 736). Sometimes under special Acts the amount is based upon the principle of re-instatement—that is, the cost of procuring equally convenient premises elsewhere—instead of on the actual value of the premises taken (*London School Board v. S. E. Ry. Co.*, 1887, 3 T. L. R. 710). Compensation may be given on the basis of the prospective value of land as building land (*Reg. v. Brown*, 1867, L. R. 2 Q. B. 630); and in fixing the value of a reversion in a public-house, allowance may be made for the licence (*Belton v. L. C. C.*, 1893, 41 W. R. 315), or for the value of the house as a tied house (*Bourne v. Mayor of Liverpool*, 1863, 33 L. J. Q. B. 15).

Award or verdict.

The award may specify a lump sum for price and damage (*Re Bradshaw's Arbitration*, 1848, 12 Q. B. 562); and a verdict may be in the same form, though either party has the right to require the two items to be assessed separately (s. 49; *Corrigal v. London & Blackwall Ry. Co.*, 1843, 5 M. & Gr. p. 249). But the award or verdict must be pecuniary only; it must not order the making of

accommodation works (*Re Ware & Regent's Canal Co.*, 1854, 9 Ex. 395; *Reg. v. S. Holland Drainage Committee*, 1838, 8 A. & E. 429); and it must not include any allowance in respect of accommodation works which the company are bound by statute to provide (*S. Wales Ry. Co. v. Richards*, 1849, 6 Ry. Cas. 197).

Procedure in an Arbitration.

If the landowner desires to go to arbitration, he must give notice in writing to that effect to the company before they have issued their warrant for a jury. The notice must state the nature of the claimant's interest, and the amount of compensation claimed (s. 23). Notice for arbitration.

Upon the landowner giving such notice, an attempt should be made to agree upon a single arbitrator. If this fails, each party should nominate an arbitrator in writing, deliver the appointment to his own arbitrator (s. 25; *Yates v. Mayor of Blackburn*, 1860, 6 H. & N. pp. 70, 71), and give notice of the appointment to the other side. The submission to arbitration is then complete, and is irrevocable. An interested person should not be arbitrator (*Re Elliott & S. Devon Ry. Co.*, 1848, 2 De G. & Sm. 17). In default of appointment by either party for fourteen days after request in writing by the other, the arbitrator of the other party may act alone and his award is final (s. 25). Appointment of arbitrators.

The arbitrators may state the award in the form of a special case (*Rhodes v. Airedale Drainage Commissioners*, 1876, 1 C. P. D. 402), and the decision of the High Court upon a case so stated is subject to appeal (*Bidder v. N. Staff. Ry. Co.*, 1878, 4 Q. B. D. 412). But there is no appeal when the case is stated in the course of the arbitration under sect. 19 of the Arbitration Act, 1889 (*Re Knight & Tabernacle Building Society*, 1892, 2 Q. B. 613). Special case.

In case of a vacancy by the death or incapacity of an arbitrator, the party affected may appoint a new arbi- Supplying vacancies in arbitrators.

trator; if he fails to do so for seven days after notice in writing from the other party, the remaining arbitrator may act alone (s. 26).

**Appointment
of umpire.**

If there are two arbitrators they must, before proceeding in the reference, appoint an umpire (s. 27); and they may do this, although the twenty-one days within which they ought under sect. 31 to make their award has expired (*Houldsworth v. Barsham*, 1862, 31 L. J. Q. B. 145; 32 *ibid.* 289). On their default for seven days after request, the Board of Trade may, on the application of either party, appoint an umpire (s. 28; Lands Clauses (Umpire) Act, 1883).

**Death of sole
arbitrator.**

If a sole arbitrator dies or becomes incapable, the arbitration begins again *de novo* (s. 29). If either arbitrator

**Default in
arbitrator.**

refuses or for seven days neglects to act, the other may proceed *ex parte* (s. 30).

**Time for
award by
arbitrators.**

If there are two arbitrators they must make their award within twenty-one days from the date when the later of the two was appointed, or within such extended time as they shall in writing appoint; otherwise the reference devolves upon the umpire (s. 31).

Declaration.

The arbitrators and umpire before acting must subscribe before a justice a declaration of fidelity, to be annexed to the award (s. 33). In the reference they may call for documents and examine witnesses on oath (s. 32).

Procedure.

**Costs of
arbitration.**

The costs of the arbitration depend on the amount which may have been previously offered by the company to the landowner. The offer must be unconditional, and must not purport to include costs (*Re Balls & Met. Board of Works*, 1866, L. R. 1 Q. B. 337). It may be withdrawn and a fresh offer substituted, but the final offer must be made before the landowner has delivered his appointment to his umpire (*Fitzhardinge v. Gloucester Canal Co.*, 1872, L. R. 7 Q. B. 776). The promoters pay the costs of the arbitration, to be settled by the arbitrators, unless the

award is the same or less than the offer of the promoters, in which case the costs of the arbitrators are borne by the parties equally, and each party bears his own costs of the arbitration (s. 34). If the claim and offer are made in different sums in respect of separate items, the test of the section is applied by comparing the aggregate sum awarded with the aggregate sum offered (*Hayward v. Met. Ry. Co.*, 1864, 4 B. & S. p. 801).

The costs, if payable to the landowner, are payable irrespective of his title, and conveyance is not a condition precedent (*Capell v. G. W. Ry. Co.*, 1883, 11 Q. B. D. 345); though in a claim under sect. 68 the rule is less favourable to the claimant (S. C., p. 350). They are recoverable by action, and an action may be brought although they have not been settled by the arbitrator or taxed (*Metrop. Dist. Ry. Co. v. Sharpe*, 1880, 5 App. Cas. 425); but they are not secured by a lien upon the land (*Ferrers v. Stafford, &c. Ry. Co.*, 1872, 13 Eq. 524). A person acting on behalf of a settled estate may be allowed out of the settled estate costs which he does not recover from the company (*Re Aubrey's Settlement*, 1853, 1 W. R. 464).

Payment and recovery of costs.

It is the duty of the promoters to pay the fees of the arbitrators and take up the award (s. 35), and the landowner can by *mandamus* compel them to do so (*Reg. v. South Devon Ry. Co.*, 1850, 15 Q. B. 1043). If the landowner pays the fees himself and takes up the award, he cannot recover the amount of the fees from the promoters (*Earl of Shrewsbury v. Wirral Rys. Comm.*, 1895, 2 Ch. 812). The promoters cannot take objection to the award on the application for a *mandamus*; this must be done in the action on the award (*L. & N. W. Ry. Co. v. Walker*, 1900, A. C. 109).

Taking up award.

It seems that, notwithstanding sect. 36, it is not now

Enforcing award.

necessary for the submission to be made a rule of Court. An award may, by leave of the Court, be enforced in the same manner as a judgment (Arbitration Act, 1889, s. 12), but this procedure should be adopted only in a clear case. If any question is in dispute, the claimant should bring an action on the award (*Re Newbold & Met. Ry. Co.*, 1863, 14 C. B. N. S. 405). But the amount is not due until the landowner has established his title and executed a conveyance; and till this has been done, therefore, an action cannot be maintained (*E. London Union v. Met. Ry. Co.*, 1869, L. R. 4 Ex. 309).

Setting aside
award.

An award is not to be set aside for irregularity or error in matter of form (s. 37). Hence, though the arbitrators have no power to order payment, the insertion of such an order in the award is not a ground for setting it aside (*Harper v. G. E. Ry. Co.*, 1875, 20 Eq. 39).

Procedure on Inquiry before Jury.

Notice by
company for
jury.

As already stated, the option of going to arbitration rests with the landowner, but in default of his exercising this option the company must proceed to have the amount of compensation determined by a jury. In order to secure, however, to the landowner a fair opportunity of considering what procedure he shall adopt, the company must give ten days' notice of their intention to have a jury summoned, and in this notice they must state what amount they are willing to give for purchase money and compensation (s. 38). The sum offered in this notice regulates the liability to costs under sect. 51 (*Reg. v. Smith*, 1892, 40 W. R. 333).

Offer of sum
as compensa-
tion.

Warrant to
summon jury.

If the ten days allowed by sect. 38 elapse without any counter-notice by the landowner for arbitration, the company should issue their warrant to the sheriff to summon a jury, or, if the sheriff is disqualified by interest—and

the interest, to have this effect, must be direct and certain (*Reg. v. M. S. & L. Ry. Co.*, 1867, L. R. 2 Q. B. 336)—then to the coroner or an ex-sheriff or ex-coroner (s. 39). The warrant should not include the interests of different persons (*Abrahams v. Mayor of London*, 1868, 6 Eq. 625); but it may include different interests of the same person (*Starr v. Mayor of London*, 1869, 7 Eq. 236).

But in railway cases either party has the option of having the case tried in the High Court (Regulation of Railways Act, 1868, s. 41) by a judge sitting with a jury (see *Re East London Ry. Co., Oliver's Claim*, 1890, 24 Q. B. D. 507). The application for trial in the High Court must be made before the warrant for a jury is issued to the sheriff. In cases under sect. 68, if the company desire to go to the High Court, they must obtain the order within twenty-one days of the landowner's notice for a jury under that section (*Tanner v. Swindon, &c. Ry. Co.*, 1881, 45 L. T. 209).

Option of trial in High Court.

If the company allow an unreasonable time to elapse before summoning a jury, they may be compelled by *mandamus* to proceed (*Fotherby v. Met. Ry. Co.*, 1866, L. R. 2 C. P. 188). An action for a *mandamus* should be brought, and an interlocutory order will not be made unless the plaintiff will be injured by delay (*Widnes Alkali Co. v. Sheffield, &c. Committee*, 1877, 37 L. T. 131).

Mandamus to company.

The summoning and drawing of the jury—which, on the application of either party, may be a special jury—and the procedure on the inquiry, are regulated by sects. 41—45, 48, and 54—57. The promoters must give ten days' notice of the inquiry to the other party. If upon the inquiry the claimant does not appear, the proceedings are stopped and the compensation is ascertained by a surveyor appointed by two justices (s. 47).

Summoning of jury.

Ten days' notice of inquiry.

Non-appearance of claimant.

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Summoning of jury.

Ten days' notice of inquiry.

Non-appearance of claimant.

Record of
verdict and
judgment.

Verdict not
reviewed.

But right to
compensation
may be dis-
puted.

Costs of
inquiry before
jury.

The sheriff gives judgment for the purchase money or compensation assessed by the jury; and the verdict and judgment are entered in the county records. The verdict is conclusive as to the amount of compensation, and cannot be reviewed on the ground of misdirection or that the verdict is against the weight of the evidence (*Reg. v. Eastern Counties Ry. Co.*, 1843, 3 Ry. Cas. 466; *Couper v. Essex v. Acton Local Board*, 1889, 14 App. Cas. p. 160); as to *certiorari*, see *infra*, p. 45. But in an action by the landowner to recover the amount awarded, the company may dispute his title to the interest in the land claimed, or his right to receive compensation. (*Reg. v. L. & N. W. Ry. Co.*, 1854, 3 E. & B. 443; *Chapman v. Monmouthshire Ry. &c. Co.*, 1857, 2 H. & N. 267.)

If the verdict is for more than the sum previously offered by the company, the promoters pay all the costs of the inquiry; otherwise, the official costs of holding the inquiry are divided equally between the parties, and each party bears his own private costs. This latter rule applies also if the landowner fails to appear on the inquiry (s. 51). The "sum previously offered" is, in ordinary cases, the sum mentioned in the notice for a jury under sect. 38 (*Pearson v. G. N. Ry. Co.*, 1870, 18 W. R. 259); it must be contained in that notice (*Reg. v. Smith*, 1892, 40 W. R. 333) and cannot afterwards be amended, except, perhaps, by withdrawing the notice and issuing a fresh one. (*Reg. v. Smith*, 1883, 12 Q. B. D. p. 487.) In proceedings under sect. 68, however, the offer may be made when notice of the time and place of inquiry is given under sect. 46 (*Hayward v. Met. Ry. Co.*, 1864, 4 B. & S. 787); and in such proceedings, if the company have made no offer, the claimant does not get costs if he in fact wholly fails to establish his claim (*Todd v. Metrop. Dist. Ry. Co.*, 1871, 19 W. R. 720). If an offer is made in the form of

separate sums for separate items of claim, the incidence of costs is determined by comparing the aggregate sum awarded with the aggregate amount claimed (*Hayward v. Met. Ry. Co.*, 1864, 4 B. & S. 787). If the landowner recovers costs under the earlier part of sect. 51, the costs are settled by a taxing master (s. 52; *Bray v. S. E. Ry. Co.*, 1849, 7 D. & L. 307), and are recoverable by distress (s. 53), or by action (*S. E. Ry. Co. v. Richardson*, 1855, 15 C. B. 810).

*Ascertainment of Compensation where Landowner is
abroad, &c.*

If the landowner is absent from the kingdom, or cannot be found, or does not appear on the inquiry before a jury, the purchase money and compensation for injury are determined by an able practical surveyor nominated, on the application of the promoters, by two justices (ss. 58, 59). The surveyor makes a declaration of fidelity (s. 60), and the nomination and declaration are annexed to the valuation, and the whole kept by the promoters, and produced on demand to the landowner and other parties interested (s. 61). The expenses of the valuation are borne by the promoters (s. 62). The amount of the valuation is paid by the promoters into Court, and an owner who was absent or could not be found, is entitled, before applying for payment of the money, to require the question of compensation to be submitted to arbitration (s. 64), the question for the arbitrators being, whether the sum paid into Court was sufficient, or whether any and what further sum ought to be paid (s. 65). Any further sum awarded must be paid or deposited within fourteen days (s. 66). If the original sum deposited was sufficient, the costs of the arbitration are in the discretion of the

Landowner
absent, &c.

arbitrators; otherwise the costs fall upon the promoters (s. 67).

Compensation for Lands Injuriouslly Affected.

Compensation where entry precedes payment of compensation; and compensation for lands injuriously affected.

Procedure for ascertaining compensation.

The sections already noticed refer to the case where the promoters propose to take lands for the purpose of the undertaking, but have not yet entered on them. Where the promoters have entered upon lands without having first made satisfaction for them, or where lands which are not taken are injuriously affected by the execution of the works, then, if more than 50% is claimed, the procedure for determining the compensation is regulated by sect. 68. If the claim is for 50% or less, it is determined by two justices under sect. 22. In proceedings under sect. 68 the claimant has the option of arbitration or a jury. If he elects for arbitration, he gives notice accordingly to the promoters, stating in his notice the nature of his interest in the lands, and the amount of compensation he claims. After the receipt of this notice the promoters have twenty-one days within which they may agree in writing to pay the amount claimed. If no such agreement is come to, the arbitration proceeds. If the landowner elects for a jury, he serves a notice to that effect on the promoters, stating the same particulars as in the previous case, and a like period of twenty-one days is allowed for a written agreement by the promoters to pay the amount claimed. But if there is no agreement they must within the twenty-one days issue their warrant for summoning a jury.

Application of previous sections to proceedings under sect. 68.

In cases where notice to treat is given under sect. 18, and the compensation is to be settled before the lands are taken, it lies with the promoters, under sect. 38, to give notice for a jury, and such notice, as has been pointed out, must contain the offer on which the incidence of costs depends under sect. 51. Under sect. 68 the proceedings are initiated

by the claimant, and it is the claimant who gives notice for a jury, if he elects that tribunal. Consequently to such proceedings sect. 38 does not apply, and the promoters may make their offer at any time before notice of the inquiry is given under sect. 46 (*Hayward v. Metrop. Ry. Co.*, 1864, 4 B. & S. 787; but see *Balls v. Metrop. B. W.*, 1866, L. R. 1 Q. B. 337). In general, however, the earlier sections, including sect. 51, apply to proceedings under sect. 68 (*Hayward v. Metrop. Ry. Co.*).

As in an arbitration or inquiry under the earlier sections, proceedings under sect. 68 settle only the amount of compensation, and the company may raise the question of the claimant's title to recover compensation in an action on the award; but they cannot on the ground of the invalidity of his claim obtain an injunction against the arbitration or inquiry being proceeded with (*Reg. v. L. & N. W. Ry.*, 1854, 3 E. & B. 443).

Inquiry under sect. 68 settles amount of compensation, but not title.

Upon default by the promoters in issuing their warrant for a jury within the twenty-one days limited by the section, the full amount claimed is forthwith recoverable with (by virtue of sect. 85) interest at 5 per cent., even though the delay is due to a mistake as to procedure (*Glyn v. Aberdare Ry. Co.*, 1859, 6 C. B. N. S. 359; *Re Aberdare Ry. Co.*, 1860, 8 W. R. 603).

On default in summoning jury, company pay full sum claimed.

It has been doubted whether sect. 68 itself gives any right to compensation, or whether it only provides a remedy. In the latter case the right must be sought elsewhere, either in the express terms of the special Act, or in the other sections of the L. C. A. as incorporated in the special Act. If the entire L. C. A. is incorporated, this is sufficient, for the right to compensation, as well for lands taken as for lands injuriously affected, is clearly implied, as in sects. 22 and 23 (*Reg. v. St. Luke's*, 1871, L. R. 6 Q. B. pp. 574, 575; 7 *ib.*, p. 151). But

Right to compensation.

probably the section gives an independent right to compensation.

Compensation
for lands
taken.

For compensation to be recovered under sect. 68 for lands taken, the company must have actually gained possession (*Church v. London School Board*, 1892, 8 T. L. R. 310); and the section applies where possession has been taken under sect. 85 (*Adams v. London & Blackwall Ry. Co.*, 1850, 2 Mac. & G. 118). But where the interest does not exceed a tenancy for a year, the tenant must claim under sect. 121 (*Reg. v. M. S. & L. Ry. Co.*, 1854, 4 E. & B. 88).

Compensation
for lands
injuriously
affected.

To support a claim for damage for injuriously affecting land by the execution of the works of the company, it is not necessary that any lands of the claimant shall have been actually taken (*Hammersmith Ry. Co. v. Brand*, 1869, L. R. 4 H. L. p. 217). With respect to such claims, however, the following rules have been established:—

Rules for
allowance of
compensation.

1. The injury must be due to the execution of the works as distinguished from their subsequent use (*Hammersmith Ry. Co. v. Brand*, *supra*), though it need not be permanent (*Ford v. Met. &c. Ry. Companies*, 1886, 17 Q. B. D. 12). Hence for injury due to the vibration caused by the running of trains no compensation is recoverable, and provided the company exercise their statutory powers properly and without negligence the right of action is taken away (*Vaughan v. Taff Vale Ry. Co.*, 1860, 5 H. & N. p. 685). On the other hand, if the injury is due to acts done in excess of the statutory powers, or to negligence, the right of action remains, and the remedy is in damages and not by compensation under the L. C. A. (*Caledonian Ry. Co. v. Colt*, 1860, 13 Macq. p. 838).

2. The injury must be such as would, but for the statute authorizing the works, be actionable. (*Met. Board of Works v. McCarthy*, 1874, L. R. 7 H. L. p. 252.)

3. The right infringed must be a right incident to land.

For a merely personal right compensation is not due under the statute. (*Caledonian Ry. Co. v. Walker's Trustees*, 1882, 7 App. Cas. p. 275; *Ricket v. Met. Ry. Co.*, 1867, L. R. 2 H. L. 175.)

4. The damage must be due to actual interference with the land or some right therein (*Met. Board of Works v. McCarthy*, 1874, L. R. 7 H. L. p. 253). Permanent obstruction of the access to premises is such an interference with them as to be the subject of compensation (*Caledonian Ry. Co. v. Walker's Trustees*, 1882, 7 App. Cas. p. 275); and similarly where the access is rendered less convenient (*Beckett v. Mid. Ry. Co.*, 1867, L. R. 3 C. P. 82). And to this head, perhaps, must be referred the rule that diversion of traffic is a ground for compensation if the value of the premises is thereby diminished for all purposes (*Met. Board of Works v. McCarthy*, 1874, L. R. 7 H. L. 243; *Same v. Howard*, 1889, 5 T. L. R. 732), or in respect of the special use to which they are put (*Wadham v. N. E. Ry. Co.*, 1884, 14 Q. B. D. 747).

Where a claim is made for injuriously affecting land, and other land of the claimant has been taken by the company, the above rules are relaxed, and compensation is recoverable generally for depreciation of the land not taken, even though it arises from the working of the line, or would not be actionable (*Duke of Buccleuch v. Met. Board of Works*, 1872, L. R. 5 H. L. 418); subject, however, to the qualification that it must arise from the use of the land that is taken (*City of Glasgow Union Ry. Co. v. Hunter*, 1870, L. R. 2 H. L. Sc. p. 83).

Compensation is also recoverable under sect. 68 for interference with the rights of third persons over lands which are taken; such as easements (*Wigram v. Fryer*, 1887, 36 C. D. 87), or restrictive covenants (*Kirby v. Harrogate School Board*, 1896, 1 Ch. 437). But a landowner cannot

Relaxation of
rules where
land taken.

Interference
with ease-
ments, &c.

obtain compensation for obstruction of a highway unless he suffers inconvenience peculiar to himself (*Caledonian Ry. Co. v. Ogilvie*, 1856, 2 Macq. 229).

Group IV. ss. 69—80.—Application of compensation paid into Court.

Payment into Court.

Purchase money or compensation payable to limited owners or persons under disability, if amounting to 200*l.* or upwards, is to be paid into the bank, and to be applied (i.) in the redemption of the land tax, or the discharge of incumbrances affecting the lands taken or other lands settled to the same uses; (ii.) in the purchase of other lands; (iii.) if paid in respect of buildings taken or injured, in removing or replacing such buildings; or (iv.) in payment to persons becoming absolutely entitled (s. 69). If the amount exceeds 20*l.* but does not reach 200*l.*, it may be paid either into Court or, with the approval of the promoters, to trustees, and be applied by the trustees to the like purposes (s. 71). If it does not exceed 20*l.*, it may be paid to the person entitled to the income of the settled estate for his own benefit (s. 72). Sect. 73 repeats the enactment that sums over 20*l.* are to be paid into Court or to trustees as aforesaid, and forbids the contracting party to retain any portion for his own use, the payment being made on behalf of the inheritance; but the Court may make an allowance to a limited owner for personal injury or inconvenience.

Discharge of incumbrances.

I. *Application of compensation in discharge of incumbrances.*—Under this head the redemption of tithe rent charge has been disallowed (*Ex p. Tottenham*, 1884, 13 L. R. Ir. 479); and similarly as to an improvement charge repayable by instalments (*Ex p. Studdert*, 1856, 6 Ir. Ch. 53). But such a charge can now be paid off under the S. L. A. 1887, s. 1 (*infra*, p. 24). A lease has been

treated, for the purpose of sect. 69, as an incumbrance on the freehold interest, and consequently the money can be applied in buying up leases of other lands settled to the same uses as the lands taken (*Ex p. Bishop of London*, 1860, 2 D. F. & J. 14).

II. *In purchase of other lands.*—A person absolutely entitled may require a re-purchase (*Re Parker's Estate*, 1872, 13 Eq. 495). If the money required exceeds the fund in Court, the tenant for life may add the excess and charge it on the lands purchased (*Re Jones' Settlement*, 1864, 3 N. R. 632). The erection of new buildings has been treated as the purchase of new property, and the money has been allowed to be applied under sect. 69 in this manner (*Re Dummer's Will*, 1865, 2 D. J. & S. 515); but not in improvements or repairs (*Drake v. Trefusis*, 1875, 10 Ch. 364), unless the repairs are necessary for the preservation of the property (*Re Aldred's Estate*, 1882, 21 C. D. 228); or in rebuilding, save with the remainderman's consent (*Re Leigh's Estate*, 1871, 6 Ch. 887). Similarly, in ecclesiastical cases, the compensation has been applied in building a new rectory (*Ex p. Rector of Hartington*, 1875, 23 W. R. 484), or new farm buildings (*Ex p. Rector of Shipton-under-Wychwood*, 1871, 19 W. R. 549), and even in repairing the rectory or farm buildings (*Ex p. Rector of Grimoldby*, 1876, 2 C. D. 225; *Ex p. Rector of Holywell*, 1865, 13 W. R. 960). But the latter application is doubtful, and the Court has refused to allow the rebuilding of the rectory out of the fund (*Ex p. Rector of Newton Heath*, 1896, 44 W. R. 645).

The mode of application of the compensation is, however, extended by sect. 32 of the S. L. A. 1882, to any of the objects to which capital moneys arising under that Act can be applied, and hence it can be devoted to the improvements specified in sect. 25 of the S. L. A. 1882,

Purchase of land.

New buildings.

Extension of objects by S. L. Acts, 1882 and 1887. Improvements.

including the rebuilding of the principal mansion-house. For the purpose of the L. C. A. the term "settlement," as used in sect. 32 of the S. L. A., is not restricted to settlements as defined by the S. L. A. (*Ex p. Vicar of Castle Bytham*, 1895, 1 Ch. 348). It corresponds to "settled" in sect. 69, and includes charity lands (*Re Byron's Charity*, 1883, 23 C. D. 171). Moreover, where an improvement authorized by the S. L. A. has been paid for by the creation of a rent charge, temporary or perpetual, the compensation may, under the S. L. A., 1887, be applied in redeeming the charge (*Ex p. Vicar of Castle Bytham, supra*).

Redemption
of improve-
ment charges.

Replacing
buildings.

III. *In replacing buildings taken or injured.*—This has been held to include the temporary provision of buildings (*Re St. Thomas's Hospital*, 1863, 11 W. R. 1018).

Payment to
persons
entitled.
Trustees.

IV. *In payment to persons absolutely entitled.*—Under this head payment was sometimes ordered to trustees with a power of sale (*Re Hobson's Trusts*, 1878, 7 C. D. 708), but the correctness of the practice was doubtful, and the case is now met by the extension of the objects of sect. 69, effected by sect. 32 of the S. L. A. 1882, since, under s. 21 (ix.) of the latter Act, payment may be made to "any person . . . empowered to give an absolute discharge." Moreover, power to pay to the trustees of the settlement for the purposes of the S. L. Acts is also expressly conferred by sect. 14 of the S. L. A. 1890. Hence, where the trustees have no power of sale, trustees for the purposes of the Act may be appointed and payment made to them (*Re Harrop's Trusts*, 1883, 24 C. D. 717). Payment may be made to trustees of a charity (*Re Byron's Charity, supra*), the consent of the Charity Commissioners in cases subject to their jurisdiction being first obtained (*Re Clergy Orphan Corporation*, 1894, 3 Ch. 145).

Tenant in
tail.

Before payment to a tenant in tail, a disentailing deed

must be executed (*Re Reynolds*, 1876, 3 C. D. 61). In the case of a married woman, not separately entitled, separate examination is necessary before payment to her husband or herself (*Re Robins' Estate*, 1879, 27 W. R. 705), unless the amount is small (*Frith v. Lewis*, W. N. 1881, p. 145). Married woman.

The transfer of a fund to the credit of a pending cause is equivalent to payment out of Court, and may be ordered under sect. 69 (*Melling v. Bird*, 1853, 22 L. J. Ch. 599). Transfer to cause.

By reason of the direction for re-investment in land the fund in Court is treated as land until some person free from disability becomes absolutely entitled to it (*Kelland v. Fulford*, 1877, 6 C. D. 491). Re-conversion.

For the money to be applied under sect. 69 an order of the Court must be obtained by the person entitled to the income. Until such application it will, upon a like order, be invested as cash under the control of the Court (*Ex p. St. John's*, 1882, 22 C. D. 93), and the income paid to the person entitled (s. 70). The application is made by petition, save in cases where an originating summons is substituted by R. S. C. Ord. 55, r. 2 (*Ex p. Mayor of London*, 1883, 25 C. D. 384); but even in such cases the costs of a petition may still be allowed, if this is, under the circumstances, the more suitable procedure (*Re Bethlehem Hosp.*, 1885, 30 C. D. 541). Order for application of money in Court.

Where the compensation is paid in respect of leaseholds, or reversions dependent on a lease, the amount is to be invested and paid in such manner as to give the parties interested the same benefit as under the lease or reversion (s. 74). In the case of a lease the proper course is to apply the compensation in the purchase of an annuity which will exhaust the term, or if an annuity is not actually purchased, in payment to the tenant for life of such a sum out of dividends and *corpus* as will exhaust the fund by the end of the term (*Asker v. Woodhead*, Money paid for leaseholds.

1880, 14 C. D. 27). If the lease is renewable, the tenant for life takes only the actual income of the fund (*Re Wood's Estate*, 1870, 10 Eq. 572).

Money paid
for reversion.

In the case of the purchase of a reversion the tenant for life takes out of the income the actual amount of the rent, and the balance is accumulated and added to the *corpus* (*Re Mette's Estate*, 1868, 7 Eq. 72). When the lease falls in, he takes the actual income of the accumulated funds (*Re Wilkes' Estate*, 1880, 16 C. D. 597).

Where Vendor's Title is defective.

Defective title
in vendor.

On payment into Court of the compensation agreed or awarded, the owner (including persons enabled to convey by the Act) should convey to the promoters the lands purchased; in default of conveyance, or if the claimant fails to adduce a good title to the lands, the promoters may vest the lands in themselves by deed poll (s. 75). And the right of the promoters to pay the purchase money into Court and to vest the lands by deed poll is extended generally to cases where the owner refuses to accept the purchase money, or neglects or fails to make a title, or refuses to convey, or is absent from the kingdom or cannot be found, or fails to appear on the inquiry before the jury (ss. 76, 77). But these sections, so far as they deal with an owner failing to make title, assume that the apparent owner has a title which is to some extent good, though it is affected by an outstanding estate or interest which cannot be got in (*Douglass v. L. & N. W. Ry. Co.*, 1857, 3 K. & J. 173). They do not apply to the case of a title which is merely possessory, and a deed poll under such circumstances will vest only the possessory interest in the promoters (*Ex p. Winder*, 1877, 6 C. D. 696). On the other hand, until a title is shown to be defective,

Vesting lands
in company
by deed poll.

possession is treated as raising a presumption of ownership (s. 79).

A possessory title, which has been perfected by the Statute of Limitations before the land is taken, gives the possessor a right to receive the purchase money (*Ex p. Chamberlain*, 1880, 14 C. D. 323); and if the statute is running when the land is taken, payment to the claimant will be ordered so soon as the time-limit has expired (*Re Erans*, 1873, 42 L. J. Ch. 357). But a mere expectation of obtaining a title gives no right to the purchase money, if the land is in fact taken before the statute has commenced to run (*Gedye v. Commissioners of Works*, 1891, 2 Ch. 630).

When money has been paid into Court under sect. 76, application may be made for investment or for distribution of the *corpus*, or for payment of dividends, according to interests of the parties claiming (s. 78). In an application for distribution any adverse claimants should be before the Court (*Re Manor of Lowestoft & G. E. Ry. Co.*, 1883, 24 C. D. 253).

Costs where Fund is in Court.

In all cases where the compensation is deposited in Court, save where this is due to the wilful default of the landowner—as where without fair ground for objection he refuses to receive the money (*Re Windsor, &c. Ry. Act*, 1850, 12 Beav. 522)—the Court may order the promoters to pay the following costs:—(i) The costs of taking the lands not otherwise provided for; (ii) the costs of interim investment; (iii) the costs of re-investment in other lands; (iv) the costs of obtaining orders for these purposes, and for payment of dividends and principal, except costs occasioned by adverse litigation; but the costs of only one application for re-investment in land are allowed, unless the Court otherwise orders (s. 80).

General
jurisdiction as
to costs.

Formerly no costs could be awarded except such as were authorized by the special Act, or by the L. C. A. as incorporated in the special Act (*Re Mills' Estate*, 1886, 34 C. D. 24); but now sect. 5 of the Judicature Act, 1890, confers jurisdiction on the Court to order payment of costs in cases not otherwise provided for (*Re Fisher*, 1894, 1 Ch. 450).

Costs under
sect. 80.

Sect. 80 only applies where there has been actual payment into Court, though payment under a later section—as sect. 85 (*Charlton v. Rolleston*, 1884, 28 C. D. p. 246)—will suffice. But the landowner has no lien for costs on the sum deposited under that section (*Ex p. Flower*, 1866, 1 Ch. 599). Orders for payment and taxation of costs must follow the words of the Act (*Re Edmunds*, 1866, 35 L. J. Ch. 538), but the exception as to costs of adverse litigation is not inserted without special reason (Seton on Judgments, 5th ed. p. 2037).

Taking lands.

I. *Costs of taking lands*.—Where the company enter under sect. 85, the land is “taken” so as to entitle the owner to the costs of ascertaining the compensation (*Charlton v. Rolleston*, *supra*); but sect. 80 applies only to costs not otherwise provided for (*Ex p. Buck*, 1863, 1 H. & M. 519). These include the costs of obtaining, where necessary, the sanction of the Court to the sale of the lands; as in the case of the sale of the property of a lunatic (*Re Taylor*, 1849, 1 Mac. & G. 210), or of property which is the subject of an action (*Haynes v. Barton*, 1841, 1 Dr. & Sm. p. 496).

Interim
investments.

II. *Costs of interim investments*.—The liability of the company is not restricted to a single interim investment. The company pay the costs of a change of investment, provided the change is not capricious (*Re Brown*, 1890, 63 L. T. 131), including a re-investment on mortgage (*Re Blyth's Trusts*, 1873, 16 Eq. 468); such re-investment, unless expressly so ordered (*Re Rectory of Gedling*, 1885,

53 L. T. 244), is not treated as a permanent investment, so as to save the company from the costs of further dealings with the fund (*Re Flemon's Trusts*, 1870, 10 Eq. 612).

III. *Costs of re-investment in land.*—Absolute owners, where the money has been paid into Court, are entitled to have it re-invested in land at the cost of the company (*Re Jones' Trust Estate*, 1870, 18 W. R. 312). Costs of redemption of land tax have been allowed, this being treated as a re-investment in land (*Re L. B. & S. C. Ry. Co.*, 1854, 18 Beav. 608). But in general the item is construed strictly. Thus the company do not bear the costs of paying off incumbrances on other parts of the settled estates, or of buying up leasehold interests (*Ex p. Corp. of Sheffield*, 1855, 21 Beav. 162); save where such interests are bought under the powers of the Episcopal and Capitular Estates Act, 1851 (*Ex p. Bishop of London*, 1860, 2 D. F. & J. 14). Payments for these purposes are treated as payments out of Court, and the company pay the costs of the petition or summons (*Re Mark's Trusts*, W. N. 1877, p. 63). Similarly upon an application for money to be expended in building, the company pay only the costs of getting the money out of Court (*Re Lathropp's Charity*, 1866, 1 Eq. 467). Re-invest-
ment in land.

If the proposed purchase has been sanctioned by the Court and then goes off, the company pay the costs which have been occasioned to the purchaser (*Re Carney's Trusts*, 1872, 20 W. R. 407), unless he is himself in fault (*Ex p. Copley*, 1858, 4 Jur. N. S. 297).

Where the money is to be spent on several different purchases, the costs of several applications can be allowed, provided such a mode of investment is shown to be for the benefit of the parties (*Re Trustees of St. Bartholomew's Hosp.*, 1859, 4 Drew. 425). Where the applicant adds

money of his own, the company pay only such costs as would have been incurred had the original fund been expended (*Ex p. King's Coll., Cambridge*, 1852, 5 De G. & Sm. 621). Moreover, the costs payable by the company are limited to such as would be payable by the purchaser under an open contract. They do not pay extra costs which the contract throws on the purchaser (*Ex p. Governors of Christ's Hospital*, 1875, 20 Eq. 605). And they are sometimes excused from costs peculiar to the persons in whose favour the purchase is made, such as, in the case of a purchase on behalf of a charity, the costs of a new scheme for the charity (*Re St. Paul's Schools, Finsbury*, 1883, 52 L. J. Ch. 454).

Orders for
dealing with
money in
Court.

IV. *Costs of obtaining orders and of payment out.*—The company pay the costs of obtaining orders for the above purposes, and also for the payment of dividends and for payment out of Court. Upon a change in the person entitled to dividends a fresh order may be required, and ordinarily the costs will fall upon the company (*Re Jolliffe's Estate*, 1870, 9 Eq. 668), but not where the change is due to the acts of the parties (*Re Byron*, 1859, 5 Jur. N. S. 261). Where the dividends are to be paid to trustees, the order should direct payment to the trustees for the time being, and if the trustees are named it is doubtful whether the company will be made to pay the costs of a fresh order necessitated by a change in the trust (*Re Pryor's Settlement Trusts*, 1876, 35 L. T. 202; *Re Met. Ry. Co. & Maire*, W. N. 1876, p. 245).

Payment out.

Costs of payment out of Court include the costs of the applicant in completing his title to the fund, as by taking out administration (*Re Lloyd & N. London Ry., &c. Act*, 1896, 2 Ch. 397). But the applicant must pay the company's costs of an unsuccessful application (*Re Smith*, 1888, 40 C. D. p. 394). The company pay the costs of an

application for the transfer of the fund to the credit of another account (*Att.-Gen. v. St. John's Hosp.*, 1893, 3 Ch. 151); and the company will remain liable for dealings with the fund so long as their name appears on the account, even though the title does not refer to the L. C. A. or the special Act (*Drake v. Greaves*, 1886, 33 C. D. 609).

Where several persons are jointly interested in the fund, each is entitled to his separate costs of applications relating to his share, provided he *bond fide* employs a separate solicitor (*Re Nicholls' Trust Estates*, 1866, 35 L. J. Ch. 516); or he can apply separately with regard to his share (*Re Mid. Ry. Co.*, 1847, 11 Jur. 1095). But where the same person is entitled to different funds, the costs of only one application are allowed (*Re Gore Langton's Estates*, 1875, 10 Ch. 328).

Several persons entitled.

Same person entitled to different funds.

It frequently happens that a petition or summons must be served upon a person whose appearance is not necessary. In such cases a tender of 42s. should be made for the costs of obtaining advice on the application, and this amount, with the costs of an affidavit of service, will be allowed against the company. The person served then appears at his own risk as to costs, and the company will not pay them unless his appearance is proper (*Wood v. Boucher*, 1870, 6 Ch. 77; *Re Duggan's Trusts*, 1869, 8 Eq. 697).

Service of petition.

Tender of costs.

Service on the remainderman is not necessary (*Ex p. Staples*, 1852, 1 D. M. & G. 294), unless the order asked for is of an exceptional nature (*Re Leigh's Estate*, 1871, 6 Ch. 887), or his interests are specially affected (*Re Crane's Estate*, 1869, 7 Eq. 322). Trustees should be served and a tender of costs made; but they should be left to appear at their own risk. Costs of their appearance, however, have been frequently allowed (see *Re Finch's Estate*, 1866, 14 W. R. 472; *Ex p. Met. Ry. Co.*, 1868,

Persons to be served.

16 W. R. 996; *Melling v. Bird*, 1853, 22 L. J. Ch. 599). Incumbrancers (including those who have become so since the fund was paid into Court) (*Re Olive's Estate*, 1890, 44 C. D. 316) should be served with a copy of the petition or summons and the usual tender made, and if they appear at the hearing they will in general not have their costs of appearance (*Re Gore Langton's Estate*, 1875, 10 Ch. p. 333; *Re Halstead United Charities*, 1875, 20 Eq. 48). But upon an application merely for payment of dividends, a mortgagee need not be served unless the tenant for life is out of possession (*Re Hungerford*, 1857, 3 K. & J. 455).

In special cases other persons may have to be served and their costs will fall on the company, unless their interest in the matter is due to the default of the applicant (*Re Clarke's Estate*, 1882, 21 C. D. 776; service on official solicitor), or to accidental circumstances not due to the company (*Re Incumbent of Whitfield*, 1861, 1 J. & H. 610; service on the Governors of Queen Anne's Bounty).

Service on
parties to an
action.

If the fund in Court belongs to an estate which is the subject of an administration action, and an application is made for re-investment in land, or for transfer to the credit of the cause, the practice as to serving the parties to the action is not settled. Sometimes service on all parties and their appearance have been deemed proper and their costs thrown on the company (*Haynes v. Barton*, 1861, 1 Dr. & Sm. 483; *Henniker v. Chafy*, 1860, 28 Beav. 621; *Re English's Settlement*, 1888, 39 C. D. 556); but it is safer for the applicant to make a tender of 42s. for costs, and the parties should not incur the risk of appearing (*Sidney v. Wilmer*, 1862, 31 Beav. 338; *Wilson v. Foster*, 1859, 26 Beav. 398).

Lands taken
by different
companies.

Where lands held under the same title are taken by different companies, the costs of re-investment are divided equally between the companies (*Ex p. Bishop of London*,

1860, 2 D. F. & J. 14), with the exception of the surveyor's fee and *ad valorem* stamp duty, which are divided rateably (*Ex p. Corporation of London*, 1868, 5 Eq. 418). But the rule of equal division is relaxed if its operation is oppressive (*Re Bishopsgate Foundation*, 1894, 1 Ch. 185).

Under the head of "costs of adverse litigation" the company do not escape costs of administering the fund—Adverse litigation. ascertaining, for instance, the various persons entitled (*Re Bareham*, 1881, 17 C. D. p. 333), even though this involves the construction of a will (*Re Gregson's Trusts*, 1864, 2 H. & M. p. 514); or adjusting the division of the fund between tenant for life and remainderman (*Askew v. Woodhead*, 1880, 14 C. D. p. 36). But if adverse titles are set up and the parties appear in Court to have their claims settled, the company bear only such costs as would have been incurred on payment out under an undisputed title (*Re Catling's Estate*, W. N. 1890, p. 75). If money is paid into Court by reason of an adverse claim being made, and the claim is afterwards withdrawn, the company do not pay the costs of getting the money out (*Re English*, 1865, 13 W. R. 932; but see *Re Duke of Norfolk's Estates*, 1874, 22 W. R. 817).

Where the company are unable or are not liable to pay costs, payment is sometimes directed out of the fund in Costs out of fund. Court (*Re Glebe Lands of Great Yeldham*, 1869, 9 Eq. 68; *Re Earl of Berkeley's Will*, 1874, 10 Ch. 56; *Re Strathmore Estates*, 1874, 18 Eq. 338).

Group V. ss. 81—83.—Conveyances.

Forms of conveyance to the promoters are given in the Forms. Schedule to the L. C. A., and conveyances in these forms are effectual to vest the lands in the promoters free from all estates and interests for which compensation has been paid (s. 81), but in practice these forms are not used. The

Costs.

promoters pay the costs of conveyance, including the costs of making title (s. 82). Under the latter head they pay the costs of taking out letters of administration, where this is necessary to complete the vendor's title (*Re Liverpool Improvement Act*, 1868, 5 Eq. 282), or of getting in the legal estate (*Ex p. Care*, 1855, 26 L. T. O. S. 176). The costs are subject to taxation (s. 83), and the taxation may be reviewed by the Court (*Sandback Charity Trustees v. N. Staff. Ry. Co.*, 1877, 3 Q. B. D. p. 5). But the landowner has no lien for them on a sum deposited by the company under sect. 85 (*Re London and Southampton Ry. Extension Act, Ex p. Sterens*, 1848, 2 Ph. 772).

Group VI. ss. 84—91.—Entry on lands.

Entry forbidden till payment of compensation

Unless by consent of the landowner, the company may not enter upon any lands until the compensation is either paid to every party interested, or deposited in the bank, except only for the purpose of survey (s. 84). A wrongful entry will be restrained by injunction (*Armstrong v. Waterford, &c. Ry. Co.*, 1846, 10 Ir. Eq. R. 60), and the entry is wrongful unless all interests are paid for (*Rogers v. Dock Co. at Kingston-upon-Hull*, 1864, 4 N. R. 494). A penalty, moreover, is provided by sect. 89 for cases where an unlawful entry is wilfully made. The company must pay for the whole of the lands to be taken from the landowner, even though they enter on part only (*Barker v. N. Staff. Ry. Co.*, 1848, 2 De G. & S. 55), and they cannot, in the absence of express power, take an easement only (*Pinchin v. London & Blackwall Ry. Co.*, 1854, 1 K. & J. 34). But if the interference does not amount to more than injuriously affecting lands, the remedy is under sect. 68 (*Macey v. Met. Board of Works*, 1864, 33 L. J. Ch. 377).

Or deposit

It is not essential, however, in a case of compulsory

purchase (*Bedford & Cambridge Ry. Co. v. Stanley*, 1862, 2 J. & H. 746), that the final compensation shall be ascertained before entry. If the promoters desire to enter earlier—and a *bond fide* desire seems to be enough, though there is no urgency (per Fry, J., in *Loosemore v. Tiverton, &c. Ry. Co.*, 1882, 22 C. D. p. 39)—they may do so on depositing in Court either the amount claimed or the value of the land as determined by a surveyor appointed by two justices (or, in the case of railway companies, appointed by the Board of Trade: Railway Companies Act, 1867, s. 36), and upon giving a bond with sureties for payment or deposit in Court of the compensation when properly ascertained, with interest at the rate of 5l. per cent. per annum from the time of entry (s. 85). The deposit must be in respect of the whole land, though the entry is on part only (*Barker v. N. Staff. Ry. Co.*, 1848, 2 De G. & S. 55), and the valuation should include compensation for severance and injury (*Field v. Carnarvon, &c. Ry. Co.*, 1867, 5 Eq. 190).

The deposit is made to the credit of the parties interested (s. 86). It remains as security for the performance of the condition of the bond, and upon performance of such condition it will be repaid to the company; otherwise it may be applied for the benefit of the landowner (s. 87). Upon an application for payment out to the company, the landowner should be served with a copy of the petition or summons, and a sum of 42s. tendered for costs. But, save under exceptional circumstances, he should not appear (*Ex p. L. & S. W. Ry. Co.*, 1869, 38 L. J. Ch. 527; *Re Tottenham, &c. Ry. Co.*, 1866, 14 W. R. 669).

In cases where the company are entitled to enter, and the owner or occupier refuses to give up possession, the company may issue their warrant to the sheriff to deliver possession to a person to be specified in the warrant. The

of amount of
valuation
with bond.

Application
of deposit.

Enforcing
delivery of
possession.

costs are payable by the person refusing to give up possession, and may be deducted from the compensation or recovered by distress (s. 91).

Group VII. s. 92.—Sale of part of premises.

Counter-notice for sale of whole of premises.

An owner cannot, in the absence of express provision in the special Act, be required to sell a part only of any house, or other building or manufactory, if he is able and willing to sell the whole (s. 92). The word "house" is used here both in its ordinary and legal sense, and includes the house and the curtilage and garden (*Richards v. Swansea Improvement Co.*, 1878, 9 C. D. p. 434). The test whether premises are part of a house is whether they would pass upon a conveyance or devise of the house (*Grosvenor v. Hampstead Junction Ry. Co.*, 1857, 1 De G. & J. 446); or, as the test is otherwise put, whether they are essential to the use and enjoyment of the house as such, and are not merely required for the personal enjoyment of a particular occupier (*Steele v. Mid. Ry. Co.*, 1866, 1 Ch. 275). A property-owner upon whom notice has been served to treat for part of premises, and who desires to sell the whole, should serve a counter-notice to that effect on the company. The company may then abandon the original notice (*Ex p. Quicke*, 1865, 13 W. R. 924), but if they do not, the notice and counter-notice are treated as constituting one notice for the purpose of enabling the compensation to be ascertained (*Pinchin v. London & Blackwall Ry. Co.*, 1854, 5 D. M. & G. 851). Before the company summon a jury an opportunity should be given to the landowner to agree on the amount (*Schwinge v. London & Blackwall Ry. Co.*, 1855, 3 Sm. & G. pp. 40, 41).

"Material detriment" clause.

It is now usual to relieve the company of the burden of sect. 92 by inserting in the special Act a clause enabling

them to take part of premises where, in the opinion of the arbitrators or jury who assess the compensation, such part can be severed without "material detriment" to the rest of the premises. In considering whether there will be material detriment it seems that the tribunal may take into account any accommodation works which the company either offer or are bound to provide (*Re Gonty & M. S. & L. Ry. Co.*, 1896, 2 Q. B. 439).

Group VIII. ss. 93, 94.—Intersected lands.

Where lands, which are not situate in a town or built upon, are so intersected by the works that less than half an acre is left on one or both sides, the owner can require the promoters to take the small parcel so left, unless the owner has other land adjoining into which it can be conveniently thrown; in the latter case the expense of making the necessary connection falls on the promoters (s. 93). Under similar circumstances, if the expense of making any communications which the company are bound to make between the intersected lands exceeds the value of the small parcel of land cut off, the company may require the owner to sell (s. 94). This latter provision is not confined to lands not in a town (*Eastern Counties Ry. Co. v. Marriage*, 1860, 9 H. L. C. 32).

Purchase of
small parcels
cut off.

Group IX. ss. 95—98.—Copyhold lands.

A conveyance of copyhold lands to the promoters is to be entered on the rolls, and fees as on a surrender paid to the steward; the conveyance, when enrolled, has the same effect as if the lands were freehold, save that, till enfranchisement, they remain subject to fines, &c. (s. 95). The lord is not entitled to a fine as on admittance (*Ecc. Comm. v. L. & S. W. Ry. Co.*, 1854, 2 W. R. 560). Within three months after enrolment of the conveyance,

Taking of
copyholds.

Enfranchise-
ment.

or within one month of entry (whichever first happens) the promoters must procure enfranchisement, and pay the lord compensation as agreed or ascertained, including compensation for the loss of fines, &c. (s. 96). Where the enfranchisement is delayed, the compensation is assessed on the value of the fines when the land was taken, without regard to subsequent improvements by the company (*Louther v. Caledonian Ry. Co.*, 1892, 1 Ch. 73). In case of difficulty with the lord, the company, on deposit of the amount of the compensation in Court, may enfranchise the lands by deed poll (s. 97). Where part only of copyhold lands are taken, the rents may be apportioned either by agreement or by two justices (s. 98).

Group X. ss. 99—107.—Common lands.

Rights in soil
and rights of
common.

Where there are rights of common in lands taken by the company, the compensation for the right in the soil is paid to the lord, and the compensation for the commonable rights is determined and paid in the same manner as is provided in case of common rights in the soil; upon payment of the compensation or deposit in Court, the commonable rights cease (s. 99). On payment or deposit of the lord's compensation he conveys the fee, and, in default, the company may vest the lands in themselves by deed poll, subject to the commonable rights till extinguished by payment or deposit of compensation (s. 100). The compensation for common rights in the soil, or for commonable rights where the soil is not in the commoners, may be determined by agreement between the promoters and a committee of the commoners (s. 101), appointed by a meeting of commoners convened by the company (ss. 102, 103). The committee may agree upon, receive, and apportion the compensation (s. 104). If no agreement is come to, the amount of compensation is determined as in

Common
rights in soil.

other cases of disputed compensation (s. 105). If no committee is appointed, it is determined by a surveyor appointed by two justices (s. 106). On payment or deposit of the compensation, the promoters may by deed poll vest the lands in themselves free from commonable rights (s. 107).

Group XI. ss. 108—114.—Lands in mortgage.

Where the lands required are subject to mortgages, the promoters may redeem the mortgages, either at once on tender of the principal, with six months' interest and costs, or on six months' notice (s. 108). But if the mortgagor is also receiving interest from the promoters as vendor, the interest to be paid to the mortgagee in lieu of notice will be borne by the mortgagor (*Spencer-Bell to L. & S. W. Ry. Co.*, 1885, 33 W. R. 771). If the mortgagee fails to convey or to show title, the promoters, on depositing the amount due in Court, may by deed poll vest the land in themselves for the estate of the mortgagee (s. 109). If the security is deficient, the mortgagee is made a party to the determination of the compensation, and upon his releasing the lands the whole is paid to him (s. 110); or, in like case, the promoters on depositing the compensation in Court may release the lands by deed poll (s. 111). Similar provision is made for the case where part only of the mortgaged land is taken (ss. 112, 113). The mortgagee is entitled to compensation paid in respect of goodwill attached to the premises (*Pile v. Pile*; *Ex p. Lambton*, 1876, 3 C. D. 36); but not where the goodwill depends on the personal skill of the owner (*Cooper v. Met. Board of Works*, 1883, 25 C. D. 472). Where the mortgage is for a fixed period, and is paid off before the due date, the mortgagee is entitled to the costs of re-investment, and to compensation for any loss of interest on the new investment (s. 114).

Right to
redeem.

Conveyance
or vesting
of estate of
mortgagee.

Security
deficient.

Mortgage
for fixed
period.

Group XII. ss. 115—118.—Rent charges.

Release of
land from
rent charge.

Compensation for the release of land required for the undertaking from a rent charge is determined, in case of difference, as in other cases of disputed compensation (s. 115). If part only of the lands is taken, the rent charge may be apportioned by agreement or by two justices; or, with the consent of the parties, the whole may be imposed exclusively on the land not taken (s. 116). The lands taken are released from the rent charge either by the owner of the charge, or by deed poll executed by the promoters (s. 117). The remaining lands are subject to the whole or to the apportioned part of the charge, as the case may be, and a memorandum of the transaction is, at the expense of the promoters, indorsed on the deed creating or transferring the charge (s. 118).

Group XIII. ss. 119—122.—Leases.

Apportion-
ment of rent
where part of
premises in
lease taken.

If the promoters require to take a part only of lands comprised in a lease, the rent is apportioned either by agreement between the lessor and the lessee on the one side and the promoters on the other, or by two justices (s. 119). The lessee in such a case is entitled to compensation for severance (s. 120).

Compensation
to yearly
tenant.

If a tenant whose interest does not exceed a tenancy for a year or from year to year is required to give up possession before the expiration of his interest, he is entitled to compensation for the value of the unexpired interest and for tenant right and any loss, including in a suitable case loss by severance; the amount of compensation, if the parties differ, to be determined by two justices (s. 121). This provision, in cases to which it applies, excludes the general provisions for reference of compensation to arbitration or a jury (*Reg. v. Lord Mayor of London*, 1867, L. R.

2 Q. B. 292). It does not apply where the tenant has an equitable interest exceeding a year (*Sweetman v. Metrop. Ry. Co.*, 1864, 1 H. & M. 543). Where notice to treat is given, and proceedings taken under the notice, the period of a year is reckoned from the date of the notice, even though it is a six months' notice for possession (*Tyson v. Mayor of London*, 1871, L. R. 7 C. P. 18); but if possession is taken under sect. 85 (*Reg. v. Kennedy*, 1893, 1 Q. B. 533), or if there is simply a demand for possession under sect. 121 without previous notice to treat (*Reg. v. G. N. Ry. Co.*, 1876, 2 Q. B. D. 151), the period is reckoned from taking possession or demand of possession, and if there is then less than a year of the term to run, the justices have jurisdiction under the section. A notice to treat is not equivalent to a demand of possession, and until such demand has been made the section does not apply (*Reg. v. Stone*, 1866, L. R. 1 Q. B. 529).

For injury to lands not taken, a yearly tenant proceeds under sect. 68 (*Reg. v. Sheriff of Middlesex*, 1862, 31 L. J. Q. B. 261), unless other part of his lands is taken (*Reg. v. M. S. & L. Ry. Co.*, 1854, 4 E. & B. 88); but in the latter case, if the lands injuriously affected are held for more than a year, and the lands taken for less than a year, the whole matter should go to an arbitrator or jury (*Bexley Heath Ry. Co. v. North*, 1894, 2 Q. B. 579).

Injurious-
affecting.

If the company have acquired the reversion, they can determine the tenancy by notice to quit, and then no compensation is recoverable by the tenant (*Syers v. Metrop. Board of Works*, 1877, 36 L. T. 277). But though the landlord can exercise a power to resume possession for the purpose of selling to the company (*Bexley Heath Ry. Co. v. North*, *supra*), it seems that the company themselves cannot do so, but must pay the tenant compensation (*Solihay Junction Ry. Co. v. Jackson*, 1874, 1 Sess. Cas., 4th series,

Determina-
tion of
tenancy by
notice to quit.

831). A tenant who does not produce his lease, or the best evidence of it, is treated as a yearly tenant and compensated accordingly (s. 122).

Group XIV. s. 123.—Limit of time for compulsory purchase.

Notice to treat must be given within limit of time.

The powers for the compulsory purchase of lands are not to be exercised after the prescribed period, or, if no period is prescribed, after three years from the passing of the special Act (s. 123). But the compulsory power is exercised by service of the notice to treat; and if this is served within the three years, the further steps in the purchase may be taken after that period (*M. of Salisbury v. G. N. Ry. Co.*, 1852, 17 Q. B. 840); and the purchase may be completed even after the expiration of the time limited for the finishing of the works (*Tiverton & N. Devon Ry. Co. v. Loosemore*, 1884, 9 App. Cas. 480), unless the notice has previously been practically abandoned (*Richmond v. N. London Ry. Co.*, 1868, 5 Eq. 353).

Group XV. ss. 124—126.—Omitted interests.

Compensation for interests omitted by mistake.

If, after the promoters have entered, any party appears to be entitled to an interest which, through mistake or inadvertence, they have omitted to purchase, they are to remain in possession: provided, within six months of the establishment of the claimant's title, they pay compensation for the land with mesne profits, the amount to be determined and paid as nearly as possible as though the purchase had preceded entry (s. 124). This section only applies to cases of genuine mistake; not to cases where the company have knowingly refrained from purchasing on account of a doubt as to title (*Stretton v. G. W. &c. Ry. Co.*, 1870, 5 Ch. 751). The effect of the section is not to

preclude the claimant from suing in ejectment, but it empowers the Court to stay execution till the six months have elapsed (*M. of Salisbury v. G. N. Ry. Co.*, 1858, 5 C. B. N. S. 174). The compensation is to be assessed as at the time of the promoters' entry (s. 125). If the promoters dispute the claim unsuccessfully, they must pay costs as between solicitor and client (*Doe v. Mayor of Manchester*, 1852, 12 C. B. 474), in addition to compensation, before they become absolutely entitled to the interest in question (s. 126).

Group XVI. ss. 127—132.—Sale of superfluous lands.

The promoters must absolutely sell all superfluous lands within the prescribed period, or, if no period is prescribed, within ten years after the expiration of the time limited by the special Act for the completion of the works; in default, the superfluous lands will vest in the adjoining owners in proportion to the extent of their boundaries (s. 127). This provision is not restricted to land acquired compulsorily (*Hooper v. Bourne*, 1877, 3 Q. B. D. p. 273). The test of land being superfluous is whether or not, at the expiration of the ten years, there is *bonâ fide* reason to believe that within a reasonable time, having regard to the nature of the undertaking, the land will be required for the purposes of the undertaking (*G. W. Ry. Co. v. May*, 1874, L. R. 7 H. L. p. 283; *Hobbs v. Mid. Ry. Co.*, 1882, 20 C. D. p. 432). It is not superfluous if the growth of traffic points to its future use (*Hooper v. Bourne*, 1880, 5. App. Cas. 1); and it is sufficient if the proper advisers of the company have fairly and reasonably come to the conclusion that the land will be required (*L. & S. W. Ry. Co. v. Gomm*, 1882, 20 C. D. p. 584). The company are not estopped from alleging that the land is required by the fact that they have negotiated for the sale of it (*Macfie v.*

Superfluous
lands to be
sold.

Test whether
lands are
superfluous.

Callander, &c. Ry. Co., 1898, A. C. 270), or have purported to convey it (*Hobbs v. Mid. Ry. Co.*, 1882, 20 C. D. 418), within the ten years. A sale under the section must be absolute. Consequently the company cannot reserve a right of re-purchase (*L. & S. W. Ry. Co. v. Gomm, supra*).

Right of pre-emption in adjoining owners.

Unless the superfluous lands are in a town, or are used for building purposes, they must be offered first to the existing owners of the lands from which they were severed; and then to the immediately adjoining owners (s. 128). Upon the lands being sold within the ten years' limit (*Carington v. Wycombe Ry. Co.*, 1868, 3 Ch. 377), the right of pre-emption at once arises; and also upon an attempt to sell (*L. & S. W. Ry. Co. v. Blackmore*, 1870, L. R. 4 H. L. 610). The offer of the company must be accepted within six weeks, if at all (s. 129). The price is to be settled by agreement or arbitration; the costs of the arbitration being in the discretion of the arbitrators (s. 130).

Group XVII. s. 133.—Liability for land tax and poor rate.

Deficiency in land tax and poor rate.

The promoters make good the deficiency in land tax and poor rate in respect of land taken until the works are completed and assessed (s. 133). But the liability ceases on completion of the works, although they are not in fact assessable (*Stratton v. Metrop. Board of Works*, 1874, L. R. 10 C. P. 76).

Group XVIII. s. 134.—Service on promoters.

Service of writs, &c.

Writs, notices, &c., requiring to be served on the promoters, must be served at their principal office, or on the secretary (s. 134).

Group XIX. s. 135.—Tender of amends for irregularity.

Irregularity in proceedings.

In case of irregularity or trespass in the exercise of the statutory powers, liability may be met by tender of amends or payment into Court (s. 135).

Group XX. ss. 136—149.—**Recovery of penalties.**

Penalties and forfeitures under the L. C. A. or the special Act may be recovered summarily before two justices (s. 136). One half may be awarded to the informer; the rest goes to the poor rate (s. 139). A penalty or forfeiture must be sued for within six months of the offence (s. 142). An appeal from justices lies to quarter sessions (s. 146). Special provision is made with respect to the Metropolitan Police District (s. 148).

It is provided that proceedings under the L. C. A., or the special Act, are not to be quashed for want of form, or removed into the High Court by *certiorari* (s. 145). But this does not preclude *certiorari* where the proceedings have been fundamentally irregular, as where the jury have exceeded their jurisdiction by awarding compensation in respect of an improper item (*Penny v. S. E. Ry. Co.*, 1857, 7 E. & B. 660), or by deciding a question of title (*Reg. v. L. & N. W. Ry. Co.*, 1854, 3 E. & B. 443). Application for *certiorari* should be made promptly (*Reg. v. Sheward*, 1880, 9 Q. B. D. 741).

When
certiorari lies.

Group XXI. ss. 150, 151.—**Access to special Act.**

Copies of the special Act are to be kept at the principal office of the company and deposited with the clerk of the peace, and are to be open to inspection by all persons interested.

Copies of
special Act.

Group XXII. s. 152.—**Extent of Act.**

The Act does not extend to Scotland. For that country provision is made by the Lands Clauses Consolidation (Scotland) Act, 1845 (8 & 9 Vict. c. 19).

THE
LANDS CLAUSES CONSOLIDATION ACT, 1845
(8 & 9 VICT. c. 18).

APPLICATION OF ACT.

An Act for consolidating in one Act certain provisions usually inserted in Acts authorising the taking of Lands for Undertakings of a public nature.

[8th May, 1845.]

[*Whereas it is expedient to comprise in one general Act sundry provisions usually introduced into Acts of Parliament relative to the acquisition of lands required for undertakings or works of a public nature, and to the compensation to be made for the same, and that as well for the purpose of avoiding the necessity of repeating such provisions in each of the several Acts relating to such undertakings as for ensuring greater uniformity in the provisions themselves be it enacted that*] this Act shall apply to every undertaking authorized by any Act which shall hereafter be passed, and which shall authorize the purchase or taking of lands for such undertaking, and this Act shall be incorporated with such Act; and all the clauses and provisions of this Act, save so far as they shall be expressly varied or excepted by any such Act, shall apply to the undertaking

Preamble
repealed
by Statute
Law Re-
vision Act,
1891.

Section 1.

Act
applies
where
taking of
land
authorized
by special
Act.

Section 1. authorized thereby, so far as the same shall be applicable to such undertaking, and shall, as well as the clauses and provisions of every other Act which shall be incorporated with such Act, form part of such Act, and be construed together therewith as forming one Act.

1. The Act applies only to undertakings of a public nature.

Private
charity.

A private charity incorporated by Royal Charter, and having under a subsequent special Act power to take land compulsorily, is not an "undertaking or work of a public nature" within the meaning of sect. 1; and hence, in the absence of express provision, sect. 80 of this Act is not incorporated (*Re Sion College, Ex p. Mayor of London*, 1887, 57 L. T. 743).

2. The undertaking must be authorized by an Act passed after May 8th, 1845.

Effect of
reference
in Act
after 1845
to Act
before
1845.
Trans-
actions
under
later Act.

Where an Act of Parliament passed before this Act is referred to in an Act passed after this Act, a question arises whether this Act is incorporated in the later Act for the purpose of transactions depending in part on the earlier Act. If the effect of the reference is to place transactions under the later Act in the same position as though they had been transactions under the earlier Act, then the Lands Clauses Act is excluded, and the case depends solely on the earlier Act. Thus the statute 3 & 4 Vict. c. 87 (1840) authorized the Commissioners of Works to make certain public improvements; the statute 9 & 10 Vict. c. 34 (1846) authorized further improvements, and extended to such further improvements the provisions of 3 & 4 Vict. c. 87, as though they had been authorized by that Act. It was held in *Re Cherry's Settled Estates* (1862, 4 D. F. & J. 322) that the L. C. A. was not incorporated in 9 & 10 Vict. c. 34, transactions thereunder being carried back to 3 & 4 Vict. c. 87. (See *Re Westminster Estate of the Parish of St. Sepulchre*, 1864, 4 D. J. & S. 232, 243). And notwithstanding the criticism of Lord Esher, M. R., in *Re Wood's Estate* (1886, 31 C. D. pp. 617, 618), a similar decision was given upon the same Acts in *Re Mills' Estate* (1886, 34 C. D. 24).

Where, however, the effect of the later Act is to import the provisions of the earlier Act into itself, the result is different. The provisions of the earlier Act are treated as being enacted anew in the later Act, and the L. C. A. is incorporated, except so far as it is expressly varied or excepted. Thus 18 & 19 Vict. c. 95, in authorizing the Commissioners of Works to take lands, enacted that certain specified sections of 3 & 4 Vict. c. 87 were to be deemed to be repeated therein, *i.e.*, in 18 & 19 Vict. c. 95. Consequently this later Act, with the sections imported from the earlier Act, was deemed to have been passed after the L. C. A. of 1845, and that Act was incorporated (*Re Wood's Estate*, 1886, 31 C. D. 607).

Section 1.
Trans-
actions
under
earlier
Act.

With regard to undertakings generally, however, the rule is that whenever an undertaking has been established by an Act prior to the L. C. A., and then, subsequently to the passing of that Act, another Act passes which authorizes the taking of other lands for that undertaking, then the L. C. A. applies to the whole undertaking as if it had been always applicable to it, so far as any of its provisions remain applicable, or there is anything to be done under it. Thus, where a special Act was passed in 1844, under which certain lands were taken, and in 1847 a second Act was passed extending the first, it was held that the L. C. A. applied to the whole undertaking, and that the owner of lands taken under the Act of 1844 became entitled to the benefit of its provisions (*L. & Y. Ry. Co. v. Evans*, 1851, 15 Beav. 322, 327). The meaning of the Legislature was, it was said, that whenever a company is compelled to come for a fresh Act of Parliament to vary the provisions of an old Act, the condition is imposed that the L. C. A. shall be imported into the old Act, and all its provisions shall apply to that Act.

Effect of
Extension
Act after
1845 is to
apply
L. C. A.
to original
Act,
though
before
1845.

3. The special Act must authorize the acquisition of land.

This section was held not to apply to a private Act passed merely to enable the Westminster Improvement Commissioners to give effect to a lease, but not otherwise authorizing the acquisition of land (*Wale v. Westminster Hotel Company*, 1860, 8 C. B. N. S. 276).

Section 1. 4. The L. C. A. is incorporated in the special Act, and applies to the particular undertaking, except as expressly varied or excepted by the special Act. (See *Kirby v. Harrogate School Board*, 1896, 1 Ch. 437, 447.)

L. C. A.
depends
on special
Act.

The L. C. A. has no independent operation of its own. It assumes that special Acts will be passed from time to time containing provisions applicable to particular undertakings, and thereupon the general provisions of the L. C. A., except as varied or excepted, come into operation with respect to that undertaking (*Dartford Rural Council v. Bexley Heath Ry. Co.*, 1898, A. C. 210).

Effect of
different
rule in
special
Act.

If the special Act itself gives a complete rule on any subject, the expression of that rule will amount to an exception of the subject-matter of the rule out of this Act. If, however, the rule given by the particular Act applies only to a portion of the subject, that does not interfere with the rule of this Act remaining incorporated as to the other and separate part of the same subject. Thus, where money is paid into Court, the costs incurred anterior to the money coming into Court are distinct from those incident to the payment into Court, and sect. 82 of this Act, dealing with such anterior costs, has been held to be incorporated in a special Act which dealt only with the costs in the case of payment into Court where parties were under disability (*Re Westminster Estate of the Parish of St. Sepulchre*, 1864, 4 D. J. & S. 232, 242). And where the special Act provided for the expenses of purchases on re-investment in land, this was held not to exclude sect. 80 so as to exempt the promoters from paying the costs of an application for payment out of the money in Court to the person absolutely entitled (*Re Wood's Estate*, 1886, 31 C. D. 607).

Sect. 34
not ex-
cluded.

A special Act empowered the company to do certain things, paying compensation to the injured parties. The compensation was to be assessed by a special tribunal for arbitration provided by the special Act, but no provision was made for the costs of arbitration. The L. C. A. was incorporated except where expressly varied. It was held that sect. 34 was not excluded, and that the costs of an arbitration under the special Act were to be regulated by it (*Metrop. Dist. Ry. Co. v. Sharpe*, 1880, 5 App. Cas. 425).

In construing Acts of Parliament of this kind, said Lord Selborne, C., in the case just referred to (*loc. cit.*, p. 433), and adjusting the general provisions in the general

Act to the particular provisions of the special Act, con- Section 1.
siderations of reason and justice, and the universal analogy
of such provisions in similar Acts of Parliament, are
proper to be borne in mind and ought to have much
weight and force.

For other decisions as to the exclusion of special sections,
see *Weld v. S. W. Ry. Co.* (ss. 16, 17, *infra*, p. 90);
Ex p. Rayner (s. 34, *infra*, p. 130); *Reg. v. St. Luke's* (s. 68,
infra, p. 164); *Sparrow v. Oxford W. & W. Ry. Co.* (s. 92,
infra, p. 273); *Reg. v. Lord Mayor of London* (s. 121,
infra, p. 316).

The L. C. A. is frequently incorporated, with or with- Incorpo-
ration of
L. C. A.
in general
Acts.
out variation, in general Acts authorizing the acquisition
of land for public purposes, as well as in special Acts
regulating railways and other commercial undertakings
which, while of a public nature, are established with a
view to profit. Examples of such incorporation in general
Acts will be found in the Public Health Act, 1875, ss. 175,
176; the Municipal Corporations Act, 1882, s. 107; the
Local Government Act, 1888, s. 65, and the Local
Government Act, 1894, s. 9; the Housing of the Working
Classes Act, 1890, s. 20; the Military Lands Act, 1892,
s. 2; and the Naval Works Act, 1895, s. 2.

Where the application of the compulsory clauses depends Provi-
sional
order.
upon the making of a provisional order and the sanction of
the order by Parliament, as under sects. 176 and 297 of the
Public Health Act, 1875, the provisional order cannot be
brought up by *certiorari* to be quashed. The proper course
is to petition Parliament against the passing of a con-
firmatory statute (*Frewen v. Hastings Local Board*, 1865,
13 W. R. 678).

In construing this Act the headings prefixed to the Effect of
headings
to groups
of sections.
various groups of sections may be taken as a guide to the
meaning of all the sections in the group (*Eastern Counties
Ry. Co. v. Marriage*, 1860, 9 H. L. C. 32, 69; *Ham-
mersmith, &c. Ry. Co. v. Brand*, 1869, 5 App. Cas. p. 199,
per Lord Chelmsford). But this principle must be accepted
with caution, and in the latter case Lord Cairns said
(p. 216) that it was dangerous to trust to the headings for
the purpose of restricting or confining the natural opera-
tion of the words found in the various clauses under the
headings.

For the incorporation of groups of sections by reference
to the headings, see below, sect. 5.

CONSTRUCTION OF THIS ACT AND OF SPECIAL ACTS.

- § 2. Interpretations in Act.
- § 3. Interpretations in Act and Special Act.
- § 4. Short Title of Act.
- § 5. Incorporation of Portions of Act by Reference to Introductory Headings.

And with respect to the construction of this Act and of Acts to be incorporated therewith, be it enacted as follows:—

Interpretations in this Act.

Section 2.

“The special Act.”

“Pre-scribed.”

“The works.”

“Promoters of the undertaking.”

II. The expression “the special Act,” used in this Act, shall be construed to mean any Act which shall be hereafter passed which shall authorize the taking of lands for the undertaking to which the same relates, and with which this Act shall be so incorporated as aforesaid; and the word “prescribed,” used in this Act in reference to any matter herein stated, shall be construed to refer to such matter as the same shall be prescribed or provided for in the special Act, and the sentence in which such word shall occur shall be construed as if instead of the word “prescribed” the expression “prescribed for that purpose in the special Act” had been used; and the expression “the works” or “the undertaking” shall mean the works or undertaking, of whatever nature, which shall by the special Act be authorized to be executed; and the expression “the promoters of the undertaking” shall mean the parties, whether company, undertakers, com-

missioners, trustees, corporations, or private persons, by the special Act empowered to execute such works or undertaking. Section 2.

As to the term "special Act" in the case of the Military Lands Act, 1892 (55 & 56 Vict. c. 43), see *Hill v. Haire*, 1899, 1 Ir. 87; *infra*, p. 322. Special Act.

Her Majesty's Commissioners of Public Works purchasing under the powers of 18 & 19 Vict. c. 95, are promoters within the meaning of this section. The objection that they represent the Crown and that the Crown is not mentioned in the L. C. A. is met by the consideration that the latter Act is to be taken to be re-enacted in 18 & 19 Vict. c. 95 (*Re Wood's Estate*, 1886, 31 C. D. 607, 619). Commissioners of Public Works.

Interpretations in this Act and the special Act.

III. The following words and expressions, both in this and the special Act, shall have the several meanings hereby assigned to them, unless there be something either in the subject or context repugnant to such construction; that is to say:— Section 3.

Words importing the singular number only shall include the plural number, and words importing the plural number only shall include the singular number: Number.

Words importing the masculine gender only shall include females: Gender.

The word "lands" shall extend to messuages, lands, tenements, and hereditaments of any tenure: "Lands."

The word "lease" shall include an agreement for a lease: "Lease."

The word "month" shall mean calendar month: "Month."

The expression "Superior Courts" shall mean Her Majesty's Superior Courts of Record at Westminster or Dublin, as the case may require: "Superior Courts."

Section 3.**"Oath."**

The word "oath" shall include affirmation in the case of Quakers, or other declaration lawfully substituted for an oath in the case of any other persons exempted by law from the necessity of taking an oath:

"County."

The word "county" shall include any riding or other like division of a county, and shall also include county of a city or county of a town:

"The Sheriff."

The word "sheriff" shall include under-sheriff, or other legally competent deputy; and where any matter in relation to any lands is required to be done by any sheriff, or by any clerk of the peace, the expression "the sheriff" or the expression "the clerk of the peace" shall in such case be construed to mean the sheriff or the clerk of the peace of the county, city, borough, liberty, cinque port, or place where such lands shall be situate; and if the lands in question, being the property of one and the same party, be situate not wholly in one county, city, borough, liberty, cinque port, or place, the same expression shall be construed to mean the sheriff or clerk of the peace of any county, city, borough, liberty, cinque port, or place where any part of such lands shall be situate.

"The Clerk of the Peace."**"Justices."**

The word "justices" shall mean justices of the peace acting for the county, city, liberty, cinque port, or place where the matter requiring the cognizance of any such justice shall arise, and who shall not be interested in the matter; and where such matter shall arise in respect of lands, being the property of one and the same party, situate not wholly in any one county, city, borough, liberty, cinque port, or place, the same shall

mean a justice acting for the county, city, borough, liberty, cinque port, or place where any part of such lands shall be situate, and who shall not be interested in such matter; and where any matter shall be authorized or required to be done by two justices, the expression "two justices" shall be understood to mean two justices assembled and acting together:

Section 3.

"Two Justices."

Where under the provisions of this or the special Act, or any Act incorporated therewith, any notice shall be required to be given to the owner of any lands, or where any act shall be authorised or required to be done with the consent of any such owner, the word "owner" shall be understood to mean any person or corporation who, under the provisions of this or the special Act, would be enabled to sell and convey lands to the promoters of the undertaking:

"Owner."

The expression "the Bank" shall mean the Bank of *England* where the same shall relate to moneys to be paid or deposited in respect of lands situate in *England*, and shall mean the Bank of *Ireland* where the same shall relate to moneys to be paid or deposited in respect of lands situate in *Ireland*.

"The Bank."

Although the definition of "lands" is wide enough to include easements, yet there is no power under the Act to take incorporeal hereditaments apart from land (*Pinchin v. London & Blackwall Ry. Co.*, 1854, 5 D. M. & G. 851, 862; *Edinburgh & Glasgow Ry. Co. v. Campbell*, 1863, 4 Macq. 570; *Re Metrop. Dist. Ry. Co. & Cosh*, 1880, 13 C. D. p. 616). The result is that the word does not include any easements except such as are attached to the lands which are the subject of the purchase (per Jessel, M. R., in *Great Western Ry. Co. v. Swindon, &c. Ry. Co.*, 1882, 22 C. D. p. 697). But if the special Act gives express power to take easements, the term "lands," as used in this Act, includes

Easements.

Section 3. easements for the purpose of being construed with the special Act (*Hill v. Midland Ry. Co.*, 1882, 21 C. D. 143, 147); unless, indeed, the mode of acquisition and use of the easement is expressly provided for by the special Act (*Great Western Ry. Co. v. Swindon & Cheltenham Ry. Co.*, 1884, 22 C. D. 677; 9 App. Cas. 787). It seems, however, that a company can take by agreement any easement which is sufficient for all the purposes sanctioned by the special Act (see per Lord Watson, 9 A. C. p. 801).

Although by the special Act "land" is to be construed to include any right over land, yet the promoters upon taking land subject to an easement need not give notice to treat for the easement, but the owner of the easement will recover compensation under sect. 68 in respect of his lands being injuriously affected (*Clark v. School Board for London*, 1874, 9 Ch. 120).

Mines. The term "lands" includes mines, and the company after having acquired the surface may proceed to acquire the mines separately. The power to take mines is not interfered with by sects. 77—79 of the Railways Clauses Act, 1845, which are for the benefit, not of the mine-owner, but of the company, and only exempt the company from the obligation of buying the minerals at once together with the surface lands (*Errington v. Metrop. Dist. Ry. Co.*, 1882, 19 C. D. 559). Sect. 77 provides that the company shall not be entitled to mines or minerals unless expressly purchased; and, except as to such as are necessary to be dug or carried away or used in the construction of the works, minerals are to be deemed to be excepted out of a conveyance of lands purchased, unless expressly named and conveyed: by sect. 78 the owner of mines or minerals lying under or near the railway—within forty yards if no distance is prescribed—may not work them without notice to the company; and on receipt of such notice, the company, if it appears that the working will damage the railway, may prevent the working by paying compensation, to be settled, if not agreed, as in other cases of disputed compensation: by sect. 79, if before the expiration of thirty days the company do not state their willingness to treat, the owner may work the mines "so that the same be done in a manner proper and necessary for the beneficial working thereof, and according to the usual manner of working such mines in the district where the same shall be

situate"; but he must make good damage caused to the railway by improper working. Section 3.

The effect of the sections is that the company under a statutory purchase of the surface do not obtain any right of subjacent or adjacent support from the mines, and the owner, if the company do not compensate him, is free to work them subject only to the limitations of sect. 79 (*G. W. Ry. Co. v. Bennett*, 1867, L. R. 2 H. L. 27). He may work them by surface workings, if such is the usual manner of working in the district (*Mid. Ry. Co. v. Robinson*, 1889, 15 App. Cas. 19), even though the railway is thereby destroyed (*Ruabon, &c. Co. v. G. W. Ry. Co.*, 1893, 1 Ch. 427; cf. *Reg. v. G. W. Ry. Co.*, 1893, 62 L. J. Q. B. 572). The right to compensation only arises upon proceedings under these sections, when the time arrives at which the owner is desirous of working the minerals (*Holli-day v. Mayor of Wakefield*, 1891, 15 App. Cas. 81; *Re Lord Gerard & L. & N. W. Ry. Co.*, 1895, 1 Q. B. 459); and it is sufficient if the owner has a *bonâ fide* intention to work by his lessees or licensees (*Mid. Ry. Co. v. Robinson*, *supra*). The compensation is assessed under the L. C. A. (*Reg. v. L. & N. W. Ry. Co.*, 1894, 2 Q. B. 512). The counter-notice by the company can be given after the thirty days mentioned in sect. 79 have expired (*Dixon v. Caled. Ry. Co.*, 1880, 5 App. Cas. 820). Similar provisions with regard to mines are made by sects. 22 & 23 of the Waterworks Clauses Act, 1847.

Apart from these special provisions, the company get by the conveyance an implied right to all reasonable subjacent and adjacent support, even though the minerals are reserved (*Caledonian Ry. Co. v. Sprot*, 1856, 2 Macq. 449; *Elliott v. N. E. Ry. Co.*, 1863, 10 H. L. C. 333; *G. W. Ry. Co. v. Cefn Cribbur Brick Co.*, 1894, 2 Ch. 157; *N. E. Ry. Co. v. Crosland*, 1862, 32 L. J. Ch. 353); especially when the mine-owner is entitled to compensation for leaving the support (*L. & N. W. Ry. Co. v. Erans*, 1893, 1 Ch. 16).

Where the company were authorized by their special Act to "appropriate and use the sub-soil and under-surface" of certain lands (without being required to take the whole of the lands), subject, however, to liability to make compensation under sect. 68, it was held that to put in force this power they must purchase the sub-soil and proceed by notice to treat in the usual way. They could not take the sub-soil and leave the owner to recover compensation for Sub-soil.

Section 3. the injury (if any) which he might suffer (*Farmer v. Waterloo & City Ry. Co.*, 1895, 1 Ch. 527. See *Metrop. Ry. Co. v. Fowler*, 1893, A. C. 416).

Justices. This interpretation does not apply to the word "justice" in sect. 33 (*Darics v. S. Staff. Ry. Co.*, 1851, 2 Prac. Cas. 599).

By the Metrop. Police Courts Act, 1839 (2 & 3 Vict. c. 71), s. 14, a metropolitan police magistrate, and by the Stipendiary Magistrates Act, 1858 (21 & 22 Vict. c. 73), s. 1, a stipendiary magistrate, may do alone any act which is required to be done by more than one justice.

Short Title of Act.

Section 4. IV. In citing this Act in other Acts of Parliament and in legal instruments it shall be sufficient to use the expression "The Lands Clauses Consolidation Act, 1845."

"Lands Clauses Acts."

By sect. 23 of the Interpretation Act, 1889 (52 & 53 Vict. c. 63), it is enacted that in any Act passed after 1st Jan. 1890, unless the contrary intention appears, the expression "Lands Clauses Acts" shall mean, as respects England and Wales, the L. C. C. A. 1845, the L. C. C. Acts Amendment Act, 1860, the L. C. C. A. 1869, and the L. C. (Umpire) Act, 1883, and any Acts for the time being in force amending the same. To this list must be added the L. C. (Taxation of Costs) Act, 1895. For the Acts subsequent to the L. C. C. A. 1845, see *infra*, pp. 361, &c.

Incorporation of Portions of the Act by Reference to the Introductory Headings.

Section 5. V. And whereas it may be convenient in some cases to incorporate with Acts of Parliament hereafter to be passed some portion only of the provisions of this Act: be it therefore enacted, that for the purpose of making any such incorporation it shall be sufficient in any such Act to enact that the clauses of this Act with respect to the matter so proposed to be incorporated (describing such matter as it is described in this

Portions of this Act may be incorporated with other Acts by reference to headings of groups.

Act in the words introductory to the enactment with respect to such matter) shall be incorporated with such Act, and thereupon all the clauses and provisions of this Act with respect to the matter so incorporated shall, save so far as they shall be expressly varied or excepted by such Act, form part of such Act, and such Act shall be construed as if the substance of such clauses and provisions were set forth therein with reference to the matter to which such Act shall relate. Section 5.

Where the special Act incorporated generally this Act, but excluded the provisions which relate to "the purchase and taking of lands otherwise than by agreement," the effect was to exclude all the sections from 16 to 68 inclusive, notwithstanding that sect. 68 is not confined to the case of lands so taken (*Ferrar v. Commissioners of Sewers*, 1869, L. R. 4 Ex. 227; *Dungey v. Mayor of London*, 1869, 38 L. J. C. P. 298). But where the special Act excepted this Act "except so much of it as relates *exclusively* to the purchase and taking of lands by compulsion," sect. 68 was not excluded (*Broadbent v. Imperial Gas Co.*, 1856, 7 D. M. & G. 436. See *Ferrar v. Commissioners of Sewers*, *loc. cit.*, p. 231). Exclusion of compulsory clauses.

While, however, the special Act, by excluding the part of this Act relating to the purchase of lands otherwise than by agreement, may exclude sections in the group 16 to 68 which do not properly belong to that group, other clauses in this Act which relate to the purchase of lands otherwise than by agreement, but which do not fall within the specified group, are not excluded (*Reg. v. Lord Mayor of London*, 1867, L. R. 2 Q. B. 292).

PURCHASE OF LANDS BY AGREEMENT.

- § 6. Power to Agree for Purchase with Owners and Persons having any Interest.
- § 7. Persons under Disability enabled to Sell and Convey.
- § 8. And exercise other Powers.
- § 9. But Purchase Money to be ascertained by Valuation.
- § 10. Power to Sell on Chief Rents.
- § 11. To be charged on Tolls, with Power of Distress.
- § 12. Persons under Disability empowered to Sell for extraordinary Purposes.
- § 13. Company empowered to Sell such Lands and Purchase others, the total Quantity held by them at one Time not exceeding the Quantity prescribed.
- § 14. Restriction in Case of Purchase from Persons under Disability.
- § 15. Municipal Corporations not to Sell without Approbation of Treasury.

And with respect to the purchase of lands by agreement, be it enacted as follows:—

*Power to Agree for Purchase with Owners and
Persons having any Interest.*

Section 6.

Promoters may purchase by agreement from owners or persons by this Act or the special Act enabled to sell.

VI. Subject to the provisions of this and the special Act it shall be lawful for the promoters of the undertaking to agree with the owners of any lands by the special Act authorized to be taken, and which shall be required for the purposes of such Act, and with all parties having any estate or interest in such lands, or by this or the special Act enabled to sell and convey the same, for the absolute purchase, for a consideration in money, of any such lands, or such parts thereof as they

shall think proper, and of all estates and interests Section 6.
in such lands of what kind soever.

Where the company is already in existence, and makes an agreement with a view to an extension of its undertaking, although the agreement, if *ultra vires*, is not binding at the time, it will become binding so soon as the necessary powers are conferred (*Eastern Counties Ry. Co. v. Hawkes*, 1855, 5 H. L. C. 331). Contract *ultra vires*.

As to contracts of a nature not specifically authorized by the statutes incorporating the company, see *Mayor of Norwich v. Norfolk Ry. Co.* (1855, 4 E. & B. 397).

1. The agreement to purchase.

i. *Form and effect of agreement.*—The contract must be in writing so as to comply with the Statute of Frauds. Contract must be in writing.

Specific performance of a contract by a railway company to purchase an interest in land was enforced at the suit of the vendor as falling within the provisions of that statute in a case where the contract arose out of a notice to treat, given by the company, and where the writing chiefly relied on—a letter by the company's solicitor in these terms: "In this case the company will pay the 1,500*l.* claimed for the purchase of Capt. Inge's interest"—had to be supplemented from documents which had their origin in an intention to carry out the purchase under the provisions of the company's special Act and this Act (*Inge v. Birmingham, &c. Ry. Co.*, 1853, 3 D. M. & G. 658).

As to the contract constituted by notice to treat followed by an agreement settling the compensation, see *infra*, p. 103.

At common law the company is not bound by a contract unless it is under its common seal (*Finlay v. Bristol, &c. Ry. Co.*, 1852, 7 Ex. 409); but by sect. 97 of the Companies Clauses Act, 1845, a contract which, if made between private persons, would be by law required to be in writing, and signed by the parties to be charged therewith, may be made on behalf of the company by a committee of directors appointed under sect. 95, or by the directors, and may be signed by such committee or any two of them, or any two of the directors, and the contract may in the same manner be varied or discharged. Contract, when required to be under seal.

It may be stipulated that the agreement shall come into force on the passing of the special Act, and in such a case Commence-

Section 6. it becomes operative on the passing of the Act accordingly
 ment of agree- (Taylor v. Chichester, &c. Ry. Co., 1870, L. R. 4 H. L. 628).

Effect of recital of plans. A mere recital of plans in an agreement will not preclude departure from them unless the plans are distinctly made part of the agreement. Thus where an agreement recited that the company were desirous of purchasing land for the purpose of constructing a railway according to a certain plan and section thereof deposited with the parish clerk, and the agreement contained no further notice of the plan and section, the company were held not to be bound in consequence of the recital to construct the railway according to such plan and section (*Breynton v. L. & N. W. Ry. Co.*, 1846, 10 Beav. 238).

Deviation from course of line agreed upon. Where, after an agreement with a landowner for the purchase of such of his land as might be required for the construction of the railway at a certain price, an Act was obtained with a deviation in the course of the line through the landowner's estate from that originally proposed, the agreement was held to be still binding, upon the ground that the landowner had not given due notice that he would not consider himself bound (*Bedford & Cambridge Ry. Co. v. Stanley*, 1862, 2 J. & H. 746). But where under an agreement for withdrawal of opposition, any matter—such as the diversion of a turnpike road—is referred to arbitration, the company cannot depart from the award (*Wood v. N. Staff. Ry. Co.*, 1849, 1 Mac. & G. 278).

Vendors. ii. *Parties to the agreement.*—The persons who may sell to the company by private contract are—(1) the owners of the lands in question, and (2) all persons having an estate or interest therein, or by this or the special Act enabled to sell and convey. The persons so enabled by this Act are enumerated in sect. 7 as follows:—(a) corporations; (b) tenants in tail or for life; (c) married women seised in their own right or entitled to dower; (d) guardians; (e) committees; (f) trustees for charitable or other purposes; (g) executors and administrators; (h) persons entitled to receipt of rents in possession or subject to dower; and (i) lessees for life, or years, or any less interest.

Purchasers. The purchasing parties are the promoters of the undertaking—i.e., the parties, whether company, undertakers, commissioners, trustees, corporations, or private persons, by the special Act empowered to execute the works (sect. 2, *supra*, p. 52).

The purchase of lands by municipal corporations is regulated by sect. 107 of the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), which provides as follows:—

Section 6.
Municipal
corpora-
tions.

- (1) Where a municipal corporation has not power to purchase or acquire land, or to hold land in mortmain, the council may, with the approval of the Treasury, purchase or acquire any land in such manner and on such terms and conditions as the Treasury approve, and the same may be conveyed to and held by the corporation accordingly.
- (2) The provisions of the Lands Clauses Consolidation Acts, 1845, 1860 and 1869, relating to the purchase of land by agreement, and to agreements for sale, and conveyances, sales, and releases of any lands or hereditaments, or any estate or interest therein by persons under disability, shall extend to all purchases of land under this section.

This provision replaces sect. 6 of the L. C. A., 1860, as to the repeal of which see *infra*, p. 364. By sect. 72 of the Local Government Act, 1888 (51 & 52 Vict. c. 41), the Local Government Board are substituted for the Treasury for the purpose of approving acquisitions of land.

Agreements are frequently entered into by the promoters with a view to their being performed by the company after incorporation; but in the case of companies generally it is settled that, since the company is not in existence at the date of the contract, and was not at that date able to contract, no subsequent ratification will make it binding upon the company. To produce this result the company must enter into a fresh contract to the same effect (*Kelner v. Baxter*, 1866, L. R. 2 C. P. 174; *Re Northumberland Avenue Hotel Co.*, 1886, 33 C. D. 16). In the case, however, of companies which are established by special Act, the opposition of interested parties is frequently bought off by concessions made by the promoters, and the company is not allowed subsequently to ignore the stipulations of which it thus obtains the benefit.

Agree-
ments
before
incorpora-
tion.

An agreement to withdraw or withhold opposition to a bill in Parliament is not illegal, and a court of equity will enforce a contract founded on such a consideration. A person, acting on behalf of the subscribers to a railway who were then soliciting a bill in Parliament for the purpose of forming them into an incorporated joint-stock company, entered into a contract with the trustees of a road, whereby it was stipulated that, in consideration of the trustees with-

Section 6. drawing their opposition in Parliament, and consenting to forego certain clauses for the insertion of which in the Act they had intended to press, a formal instrument to the effect of the clauses should be executed under the seal of the company when incorporated. The bill was accordingly allowed to pass unopposed and without the clauses. An injunction was granted at the suit of the trustees to prevent the company from violating the provisions contained in the omitted clauses (*Edwards v. The Grand Junction Ry. Co.*, 1836, 1 My. & Cr. 650; *Harby v. East and West India Docks, &c. Ry. Co.*, 1851, 1 D. M. & G. 290; cf. *Raphael v. Thames Valley Ry. Co.*, 1867, 2 Ch. 147).

And although an agreement prior to incorporation has not been made with a view to averting opposition, yet in the case of public undertakings a more liberal rule has prevailed than is warranted by *Kelner v. Baxter* (*supra*), and to make the agreement binding on the company it is sufficient that the company have adopted it and obtained the benefit of it (*Goody v. Colchester, &c. Ry. Co.*, 1852, 17 Beav. 132. See *Eastern Counties Ry. Co. v. Hawkes*, 1855, 5 H. L. C. 331, pp. 356, 374; *Bedford, &c. Ry. Co. v. Stanley*, 1862, 2 J. & H. 746, p. 759). But in order that the agreement may be specifically enforced, it must be definite and proceedings must be taken without undue delay (*Stuart v. L. & N. W. Ry. Co.*, 1852, 1 D. M. & G. 721).

Transfer
of agree-
ments to
rival or
amalgama-
ted com-
panies.

And if agreements would be binding upon the projected company, the liability can be transferred to a rival company or to an amalgamated company. Thus if, when two rival schemes are before Parliament, the promoters of the two schemes agree that the promoters of that which is adopted shall take over and be bound by the contracts for purchase entered into by the other, the vendors being consenting parties, the latter can obtain specific performance (*Stanley v. Chester, &c. Ry. Co.*, 1838, 3 My. & Cr. 773); and where under similar circumstances the two companies are incorporated in one, they are bound by the agreement (*Preston v. Liverpool, &c. Ry. Co.*, 1851, 1 Sim. N. S. 586; *Capper v. Earl of Lindsey*, 1851, 3 H. L. C. 293).

As to the effect of parliamentary recognition of a contract by recital in an Act, see *Galloway v. Mayor of London*, 1866, L. R. 1 H. L. 34.

Abandon-
ment of
agreement
made

But the company will not be liable if they do not act upon the agreement so as to obtain the benefit of it. Thus, where a railway company had abandoned the

undertaking without having done anything to adopt an agreement made before incorporation, except by staking out the intended line, specific performance was refused (*Preston v. Liverpool, &c. Ry. Co.*, 1853, 17 Beav. 114). Section 6.
before
incorpora-
tion.

In another case the agreement was made between the solicitor of the intended company and the landowner. The company after incorporation neither entered upon the land nor took any proceedings to complete the railway. Although, as part of the agreement, the plaintiff had withdrawn his opposition to the Bill, it was held that the company had not adopted and obtained the benefit of the contract, so as to bind them to perform all its conditions in favour of the plaintiff, and specific performance was refused (*Gooday v. Colchester, &c. Ry. Co.*, 1852, 17 Beav. 132).

Under the Railways Construction Facilities Act, 1864 (27 & 28 Vict. c. 121, s. 30), contracts relative to the purchase and taking of lands for a railway, entered into by the promoters before the incorporation of the company by the certificate, are as binding on the company as if they had been entered into by the company. Contracts
by railway
promoters.

As to whether an agreement for purchase is conditional on the company obtaining their Act and executing the works, see *Bland v. Crowley*, 1851, 6 Rail. Cas. 756; *Gage v. Newmarket Ry. Co.*, 1852, 7 Rail. Cas. 168; *Preston v. Liverpool, &c. Ry.*, 1856, 5 H. L. C. 605.

iii. *Lands which may be purchased.*—In order that the purchase of lands may be effected by agreement, it is necessary that the taking of the lands shall be authorized by the special Act, and that the lands are required for the purposes of such Act. Both these requirements are essential also for the compulsory taking of lands, and they are considered under that head (*infra*, p. 93). Condi-
tions for
purchase.

iv. *Consideration for the purchase.*—The consideration for the purchase is in general a lump sum, including both the value of the land and damages for severance or otherwise; but under sects. 10 and 11 of this Act and the L. C. Amendment Act, 1860, it may consist of a rent charge. The agreement should provide expressly for the costs of the purchase, including the costs of preliminary negotiations, and it may also provide for the construction of accommodation works. As to settling the price where the parties are under disability, see sect. 9. Nature of
considera-
tion.

A peer has a right to bargain in his individual character for compensation, provided that the money is not promised as a consideration for his vote being given or withheld, Considera-
tion pay-
able to
peer.

Section 6. or that there has been no fraud intended or committed upon any party (*Simpson v. Lord Howden*, 1839, 1 Ry. Cas. 347, 371; 1842, 9 Cl. & F. 61).

Consideration though land not taken.

If the agreement itself is valid, it will not be invalidated by the fact of part of it relating to compensation for injury which cannot take place if the land is not taken (*Taylor v. Chichester, &c. Ry. Co.*, 1870, L. R. 4 H. L. 628).

Reference to arbitration.

The amount to be paid for the land and for compensation, as well as other matters, such as the construction of accommodation works by the company, may under the agreement be referred to arbitration. The compensation thus awarded will include the damage which will probably be produced in the ordinary working of the line, and it does not preclude further compensation for future unforeseen damage (*L. & Y. Ry. Co. v. Evans*, 1851, 15 Beav. 322; *Laurence v. G. N. Ry. Co.*, 1851, 16 Q. B. 643); and as to the inclusion of future damage in an award, see *infra*, p. 161.

Accommodation works.

An agreement before incorporation, that the arbitrator shall decide what accommodation works shall be carried out, will be ordered to be specifically performed, and the works ordered by the arbitrator constructed (*Wood v. N. Staff. Ry. Co.*, 1849, 13 Jur. 466, on app. 1 Mac. & G. 278).

Where the agreement stipulates for certain accommodation works, but the conveyance is silent, specific performance of the agreement will be enforced. The conveyance does not imply an abandonment of the agreement (*Foster v. Birmingham, &c. Ry. Co.*, 1854, 2 W. R. 378).

In an action for specific performance of an agreement to make such ways, roads, and slips for cattle as may be necessary, a reference will be directed to inquire what are necessary (*Sanderson v. Cockermouth, &c. Ry. Co.*, 1850, 2 H. & Tw. 327).

Where the reference is subject to this Act and the Railways Clauses Act, 1845, the award need not include accommodation works provided for by the latter Act (*Skerrat v. N. Staff. Ry. Co.*, 1843, 5 Ry. Cas. 166); though in general where land is taken by private contract, the jurisdiction of the Court to secure the vendor the rights he has contracted for is not ousted by the provisions of the Railway Acts (*Sanderson v. Cockermouth, &c. Ry. Co.*, *supra*; cf. *Storer v. G. W. Ry. Co.*, 1842, 2 Y. & C. C. 48).

As to accommodation works to be made by the company, see sect. 68, *et seq.* of the R. C. A. 1845; and as to the making of additional works by the landowner, see sect. 71, and *Rhondda, &c. Ry. Co. v. Talbot*, 1897, 2 Ch. 131.

2. Completion of the purchase.

Section 6.

i. *Time for completion.*—If no time is fixed for completion the company will be compelled to complete within a reasonable time. They are not entitled to insist that they may complete whenever within the limits of their compulsory powers they want the land (*Baker v. Met. Ry. Co.*, 1862, 31 Beav. 504). Where no time fixed.

Where an agreement gives the company an option to take at a specified price additional land if required, the company may take the land after the compulsory powers have expired at any time before the period limited for completion of the works (*Rangeley v. Mid. Ry. Co.*, 1868, 3 Ch. 306; *Kemp v. S. E. Ry. Co.*, 1872, 7 Ch. 364). The specified price does not necessarily include damage by severance (*Jones v. G. W. Ry. Co.*, 1840, 1 Ry. Cas. 684). Option to take additional land.

ii. *Payment of the purchase money.*—In the case of a purchase from persons under disability the purchase money is paid into Court (s. 9), and this is treated as payment to the persons entitled (*Taylor v. Chichester, &c. Ry. Co.*, *supra*). Payment into Court.

Where a cheque is given for the amount of the purchase money, and by request of the company it is held over, and the bank fails in the interval before presentation, the loss will fall on the company and not on the landowner (*Ward v. Oxford, W. & W. Ry. Co.*, 1852, 2 D. M. & G. 750). Insolvency of bank.

Where a deposit was, at the request of the vendor, paid into a certain bank, and the deposit was to be treated as payment, and not merely as security, upon the insolvency of the bank the loss was thrown upon the vendor (*Sir H. St. Paul v. Birmingham, &c. Ry. Co.*, 1853, 11 Hare, 305).

Where the contract is such that a part of the purchase money (not being a mere deposit) is to be paid at once and the rest at a future day, but upon default in the second payment the sum first paid is to be forfeited, probably the contract is *ultra vires* and void; but at any rate the company will be relieved against the forfeiture (*Re Dagenham (Thames) Dock Co.*, 1873, 8 Ch. 1022). Forfeiture of purchase money.

In the ordinary case of a purchase from a person claiming to be absolute owner, the company are not entitled to enter before the purchase money has been paid to the vendor and the conveyance executed. Thus, where a vendor is selling by agreement, and a dispute arises as to his interest in the land and he claims specific performance, the company are not entitled to be let into possession on Entry before payment.

Section 6. paying the whole purchase money into Court in the action. For immediate possession they must proceed under sects. 76 and 85 (*Bygrave v. M. B. W.*, 1886, 32 C. D. 147).

But where the agreement contemplates a future payment of purchase money, the company's entry may precede the time for full completion of the purchase. Where no time was mentioned for payment, but interest was to be payable on the sum agreed upon as the price from the date of the commencement of the works until the purchase money was paid, immediate specific performance was refused to the vendor. The agreement contemplated a future payment of principal for which no time was fixed (*Bodington v. G. W. Ry. Co.*, 1849, 13 Jur. 144). And payment of a part of the purchase money has been held to give the company the right to possession (*Capps v. Norwich, &c. Ry. Co.*, 1863, 11 W. R. 657). The vendor suing for specific performance under such circumstances is not entitled to have the purchase money paid into Court (*Pryse v. Cambrian Ry. Co.*, 1867, 2 Ch. 444).

Tender of conveyance.

Where the purchase money was to be ascertained by a reference, and was to be paid within three days of the award, and "thereupon" the vendor was to execute a conveyance "subject" to payment into Court, the payment of the money and the execution of the conveyance were held not to be dependent conditions, but the payment was to precede the conveyance, and until payment the conveyance need not be tendered (*Lindsay v. Direct London and Portsmouth Ry. Co.*, 1850, 1 Prac. Cas. 529).

Interest payable from date for completion.

iii. *Interest on purchase money.*—It is the ordinary rule as between vendor and purchaser that after the time fixed for completion the vendor is entitled to interest and the purchaser to the rents and profits. But where the vendor is in occupation of the premises for the purpose of his business and continues in occupation in consequence of the purchaser's default, although he is entitled to receive interest, he is not liable to pay an occupation rent (*Leggott v. Met. Ry. Co.*, 1870, 5 Ch. p. 719). This decision, however, proceeded upon the consideration of the inconvenience of the vendor's occupation under such circumstances. If the occupation has been in fact beneficial he will be charged with the sum which fairly represents the rent (*Met. Ry. Co. v. Defries*, 1877, 2 Q. B. D. 387).

Payment into Court

Interest runs till payment to the person entitled or into

Court (*Re Belfast Water Commissioners*, 1884, 15 L. R. Ir. 13; *Ex p. White*, 1840, 9 L. J. Ex. Eq. 9). But in the absence of special circumstances payment into Court, where this is the proper course, will stop interest running against the company, and for the purpose of an agreement regulating the payment of interest such payment will be treated as the completion of the purchase. Where interest was to be paid to the vendor up to the day when the purchase should be completed, it was held that this referred to completion of the purchase by the purchaser, and that the purchase was completed on his part by the payment of the purchase money into Court (*Lewis v. S. Wales Ry. Co.*, 1852, 10 Hare, 113). But where by their conduct the purchasers had acquiesced for over a year in a demand for interest at 5% per cent. till the purchase should be completed, this was payable notwithstanding payment of the purchase money into Court, the amount having remained uninvested (*Ex p. Earl of Hardwicke*, 1852, 1 D. M. & G. 297).

Section 6.
 stops
 interest.

Under an agreement for the purchase of lands which were the subject of an action, the purchase money was to be paid into a bank pending the approval of the contract, when it was to be paid into Court. The company paid the money into the bank, but they did not apply to have it paid into Court till long after the approval of the purchase. They were charged with interest from the date of the contract (*Chambers v. White*, 1850, 14 Jur. 1129).

A sum of money was paid into Court by a local authority for lands taken compulsorily by them under the Artizans and Labourers' Dwellings Improvement Act, 1875 (38 & 39 Vict. c. 36). On appeal a verdict for a larger sum was given by a jury, and the excess was subsequently paid into Court. Interest at 4% per cent. was allowed on such excess from the date of the first payment to the date of the second payment (*Re Shaw & The Corp. of Birmingham*, 1884, 27 C. D. 614; *Re Naran & Kingscourt Ry. Co.*, 1876, Ir. R. 10 Eq. 113).

Interest
 on excess
 of price
 not paid.

3. Remedies for non-completion.

The agreement for sale can be enforced in an action for specific performance, and such remedy is not excluded by the fact of an action at law being maintainable (*Eastern Counties Ry. Co. v. Hawkes*, 1855, 5 H. L. C. 331). Specific performance has been ordered against a railway company

Specific
 perform-
 ance.

Section 6. on the ground of part performance where by their acts they have ratified a contract entered into by an agent without authority, although the contract was not under seal or otherwise good under the Companies Clauses Act, 1845, s. 97 (*Wilson v. West Hartlepool Ry. Co.*, 1865, 2 D. J. & S. 475; *London & Birm. Ry. Co. v. Winter*, 1840, Cr. & Ph. 57).

Purchase money ordered to be paid into Court.

Where the amount of purchase money has been fixed by arbitration and an action is brought for specific performance, the company, if the title has been accepted and they are in possession, will be ordered to pay the amount into Court, notwithstanding that they object to the award, no actual steps to set it aside having been taken (*S. E. Ry. Co. v. L. B. & S. C. Ry. Co.*, 1866, 14 W. R. 666). An order for payment of the purchase money and interest into Court within three months has been made before delivery of the statement of claim (*Bond v. Hull & Barnsley Ry., &c. Co.*, W. N. 1887, p. 88; *cf. Griffiths v. Crystal Palace, &c. Ry. Co.*, 1866, 14 L. T. 753).

Before judgment for specific performance, the landowner must prove his title, and, if necessary, a reference to Chambers for investigation of the title will be directed (*Gunston v. E. Gloucestershire Ry. Co.*, 1868, 18 L. T. 8); but where by the agreement the company have undertaken to obtain from Parliament powers to enable the vendor to make a good title, they cannot set up his deficient title as a defence to an action for specific performance (*Eastern Counties Ry. Co. v. Hawkes, supra*). Where the vendor had only a contract for purchase of the land, but had not paid his purchase money, and seemed to have abandoned the possession, specific performance against him and his vendor was refused (*S. E. Ry. Co. v. Knott*, 1852, 10 Hare, 122).

Abandonment of agreement.

If, after agreement, the company subsequently proceed under their compulsory powers—as where they give notice to treat (before claiming the benefit of the agreement) and enter under sect. 85—they will be taken to have abandoned the agreement, and so will not be able to obtain specific performance (*Bedford, &c. Ry. Co. v. Stanley*, 1862, 2 J. & H. 746). But notice to treat given with a view to ascertaining the amount by arbitration under the agreement is not a waiver of the agreement (*S. Deron Shipping Co. v. Metrop. B. W.*, W. N. 1876, 167).

Lien for unpaid purchase

The unpaid vendor of land of which a railway company have taken possession has a lien on the land for the purchase money, and also for the money payable to him as

compensation for damages by severance and injury to his adjoining land, unless such compensation is the subject of a separate agreement between him and the company; and the Court will enforce the lien by sale, although the railway has been made over the land, and opened for public use (*Walker v. Ware, &c. Ry. Co.*, 1865, 1 Eq. 195; *Sedgwick v. Watford, &c. Ry. Co.*, 1867, 36 L. J. Ch. 379; *Ware v. Aylesbury, &c. Ry. Co.*, 1873, 28 L. T. 893; *Raper v. Crystal Palace, &c. Ry. Co.*, 1868, 16 W. R. 413).

Section 6.
money
enforced
by sale.

A vendor of land to a railway company, who have entered and used it for the purpose of their railway, is entitled to the same lien on the land for the unpaid purchase money, and the same remedies for enforcing it, as an ordinary vendor. Hence, where the company have entered on part under sect. 85, and on part under agreement, and an order has been made for specific performance and payment, the vendor is entitled, in default of payment, to a sale of the land, although the railway is actually made and ready for traffic. The decision in *Walker v. Ware, &c. Ry. Co.* has been repeatedly followed (*Wing v. Tottenham, &c. Ry. Co.*, 1868, 3 Ch. 740. See *Earl St. Germans v. Crystal Palace Ry. Co.*, 1871, 11 Eq. 568; *Vyner v. Hoylake Ry. Co.*, 1868, 17 W. R. 92).

The vendor is not deprived of his lien by a deposit and bond under sect. 85, or by accepting a deposit in the name of trustees in lieu of the statutory deposit, if the purchase and compensation moneys exceed the deposited sum (*Walker v. Ware, &c. Ry. Co.*, 1865, 1 Eq. 195).

Lien not
excluded
by statu-
tory de-
posit or
by bond.

Where the agreement was that the company should pay 2,000*l.* in cash, or, at the option of the company, in such securities as should be agreed upon between the parties, and the company gave a bond for that amount, it was held that this was not a contract to take securities instead of cash, and that the vendor had a lien for his purchase money, and was entitled to a sale in default of payment (*Pell v. Mid. and S. Wales Ry. Co.*, 1869, 17 W. R. 506).

Where there is a judgment for specific performance against a railway company, but no declaration of lien, the vendor cannot enforce his lien under the liberty to apply, especially if there are incumbrancers, not parties to the suit, whose rights would be affected by the lien (*A.-G. v. Sittingbourne and Sheerness Ry. Co.*, 1866, 1 Eq. 636; *Heriot v. L. C. & D. Ry. Co.*, 1867, 16 L. T. 473).

Formal
de lara-
tion of lien
required.

Where there has been a declaration of lien against the

Section 6. company, the Court will, on petition, direct a sale in default of payment by a short day. A railway company has no more right to indulgence than an ordinary vendor (*Williams v. G. E. Ry. Co.*, 1868, 16 W. R. 821).

Pending
sale, no
injunction
against
using line.

Where the unpaid vendor has commenced an action against the company to enforce his lien, the Court will not grant an injunction against the company before judgment in the action, even though the company admit their liability. An interlocutory application, it was said, to prevent the company from running their trains is monstrous (*Latimer v. Aylesbury, &c. Ry. Co.*, 1878, 9 C. D. 385). And it is the same after judgment. The Court will not, for the purpose of enforcing the lien of an unpaid vendor, restrain the company from running trains until the sale (directed by the order) of the land in question (*Lycett v. Stafford, &c. Ry. Co.*, 1872, 13 Eq. 261).

An injunction against the user of the land by the railway company should not be granted, as it makes the land useless to both parties; but pending sale, where the company is insolvent, a receiver should be appointed and be let into immediate possession. Upon the sale to enforce the lien the land is sold free from any claim of user by the company, or by the public as claiming through the company (*Munns v. I. of Wight Ry. Co.*, 1870, 5 Ch. 414; *Keane v. Athenry, &c. Ry. Co.*, 1870, 19 W. R. 318; cf. *Cosens v. Bognor Ry. Co.*, 1866, 1 Ch. 594; *Williams v. Aylesbury, &c. Ry. Co.*, 1873, 28 L. T. 547; *Nelson v. Salisbury, &c. Ry. Co.*, 1868, 16 W. R. 1074).

Where a company are let into possession on giving a bond for payment of the purchase money on a future day, and default is made on the bond, the landowner is not thereupon entitled to an injunction to restrain the company from continuing in possession until the purchase money is paid; though he may be entitled to a receiver or to have the money paid into Court (*Pell v. Northampton, &c. Ry. Co.*, 1866, 2 Ch. 100).

Injunction
granted
where
land un-
saleable.

But if the land is in fact unsaleable, an order directing a sale will be dispensed with and the company restrained from using it. Where an unpaid vendor of land taken by a railway company under its compulsory powers, the purchase money and compensation being settled by agreement, has commenced an action to enforce his lien, and an order has been made for payment with a declaration of lien and with liberty in default of payment to apply to

enforce the lien, but the order contains no order for sale, the Court will, on default in payment, upon evidence being given that the land is unsaleable, grant an injunction to restrain the company from running trains over the railway, and from continuing in possession of the land (*Allgood v. Merrybent and Darlington Ry. Co.*, 1886, 33 Ch. D. 571). Section 6.

Where the company had agreed to pay the purchase money on a certain day, but had failed to do so, the Court made an order that the money should be paid within six months, or the land delivered up, this being the usual practice in a case between individuals, and the position of a company who have purchased land being precisely the same as that of an individual (*Sutton v. Hoylake Ry. Co.*, 1869, 20 L. T. 214; *Cooper v. L. C. & D. Ry. Co.*, 1866, 14 W. R. 985; and see *Earl of Jersey v. S. Wales Mineral Ry. Co.*, 1868, 19 L. T. 446). But if the company have entered into possession before completion, and the property has in consequence been deteriorated, they must pay the purchase money into Court without being allowed the usual option of giving up possession (*Pope v. G. E. Ry. Co.*, 1866, 3 Eq. 171). Delivery up of land in default of payment.

In an action by an unpaid vendor against a railway company debenture holders of the company, who in another action have obtained a receiver, are properly made co-defendants (*Drax v. Somerset & Dorset Ry. Co.*, 1868, 38 L. J. Ch. 232). Parties to action by unpaid vendor.
Debenture holders.

In an action by unpaid vendors against two railway companies, namely, the purchasing company and their lessees, for specific performance, payment, injunction, and declaration of lien, and that the lien might be enforced by a sale; it was held that the lessees were properly made parties as being persons in possession who would be affected by the order. Payment was ordered and a lien declared against both companies with leave, in default of payment, to apply for an injunction and the appointment of a receiver to enforce the lien (*B. of Winchester v. Mid-Hants Ry. Co.*, 1867, 5 Eq. 17). So a company which works the line for the purchasing company under a traffic agreement is a proper party to the action (*Marling v. Stonehouse & Nailsworth Ry. Co.*, 1869, 38 L. J. Ch. 306); or which works the line under parliamentary powers (*Goodford v. Stonehouse & Nailsworth Ry. Co.*, 1869, 38 L. J. Ch. 307); or which works the line simply under a resolution of its Lessor and lessee company.

Section 6. own directors without any lease or agreement (*E. St. Germans v. Crystal Palace Ry. Co.*, 1871, 11 Eq. 568).

Effect of
an Act
restrain-
ing litiga-
tion.

An unpaid vendor will have leave to work out a judgment for specific performance against a company which has entered into possession, notwithstanding the passing of an Act subsequently to the judgment to restrain the continuance of suits without leave of the Court; but it is doubtful whether the Court will order a sale of the land in such a case (*Griffith v. Cambrian Ry. Co.*, 1869, 17 W. R. 979). And as to restraining actions when an arrangement is made under the Rail. Comp. Act, 1867, see sect. 7 of that Act.

Persons under Disability enabled to sell and convey.

Section 7.

Persons
enabled
to sell and
convey :
corpora-
tions,
tenants in
tail,
tenants
for life,
married
women,
guardians,
com-
mittees,
trustees,
executors,
&c.

Convey-
ance
passes
estate of
remain-
dermen,
married
woman as

VII. It shall be lawful for all parties, being seised, possessed of, or entitled to any such lands, or any estate or interest therein, to sell and convey or release the same to the promoters of the undertaking, and to enter into all necessary agreements for that purpose; and particularly it shall be lawful for all or any of the following parties so seised, possessed, or entitled as aforesaid so to sell, convey, or release—that is to say, all corporations, tenants in tail or for life, married women seised in their own right or entitled to dower, guardians, committees of lunatics and idiots, trustees or feoffees in trust for charitable or other purposes, executors and administrators, and all parties for the time being entitled to the receipt of the rents and profits of any such lands in possession or subject to any estate in dower, or to any lease for life, or for lives and years, or for years, or any less interest; and the power so to sell and convey or release as aforesaid may lawfully be exercised by all such parties, other than married women entitled to dower, or lessees for life, or for lives and years, or for years, or for any less

interest, not only on behalf of themselves and their respective heirs, executors, administrators, and successors, but also for and on behalf of every person entitled in reversion, remainder, or expectancy after them, or in defeasance of the estates of such parties, and as to such married women, whether they be of full age or not, as if they were sole and of full age, and as to such guardians, on behalf of their wards, and as to such committees, on behalf of the lunatics and idiots of whom they are the committees respectively, and that to the same extent as such wives, wards, lunatics, and idiots respectively could have exercised the same power under the authority of this or the special Act if they had respectively been under no disability, and as to such trustees, executors, and administrators, on behalf of their *cestui que trusts*, whether infants, issue unborn, lunatics, femmes covert, or other persons, and that to the same extent as such *cestui que trusts* respectively could have exercised the same powers under the authority of this and the special Act if they had respectively been under no disability.

Section 7.

if sole,
ward,
lunatic,
cestui que
trusts.

This section enables persons entitled to limited interests in possession (except married women entitled to dower and lessees for life or years) to agree to sell and to convey the fee, and it invests with the same power owners who are under disability (infants acting by their guardians and lunatics by their committees), and trustees and personal representatives; but the purchase and compensation money must be ascertained in accordance with the provisions of sect. 9.

Effect of
sect. 7.

For the application of the purchase money payable in respect of lands taken from persons under disability, see sects. 69—80.

Applica-
tion of
purchase
money.

Tenant in tail.—Inalienable estates tail are within this section, and may be conveyed by the tenant in tail in pos-

Inalien-
able
estates
tail.

Section 7. session; but this Act does not extend to the Crown, for the King not being specially named in it, the rights of the Crown are unaffected by it (*Re The Cuckfield Burial Board*, 1854, 19 Beav. 153).

**Tenant
for life.**

Under this section an equitable tenant for life cannot convey alone, but must join the parties having the legal estate (*Lippincott v. Smyth*, 1860, 8 W. R. 336; *cf. Hall v. L. C. & D. Ry. Co.*, 1866, 14 L. T. 351).

As to whether a tenant for life subject to a limitation over in the event of alienation can sell under this Act, see *Devenish v. Brown* (1856, 2 Jur. N. S. 1043). The sale can, if necessary, be effected under the Settled Land Act, 1882.

Where a railway company have given notices to treat to a legal tenant for life under a settlement and to the trustees of the settlement who have a power of sale with his consent, and the purchase money for the life estate is fixed as between the company and the tenant for life by arbitration under this Act, the trustees taking no part in the reference, the company cannot require the sale to be completed as a sale by the trustees, but it must be completed as a sale by the tenant for life under the Act (*Re Pigott & G. W. Ry. Co.*, 1881, 18 C. D. 146).

Upon a sale by a tenant for life in possession, the existence of leases was overlooked, and the company had to compensate the lessees. The vendor died before payment of the purchase money, and the leases had either expired in his life or were not binding on the next tenant for life. It was held that the company could not as against him deduct the compensation paid to the lessees from the purchase money of the land (*N. Staff. Ry. Co. v. Larton*, 1863, 3 N. R. 31).

**Interest
payable to
tenant for
life.**

Where the tenant for life upon a sale to a railway company stipulated for 5 per cent. interest on the purchase money until conveyance, it was held that this large rate of interest was not an unfair advantage to take of his position, and that no part of it need be accumulated as capital (*Re Hungerford & Rugby, &c. Ry. Co.*, 1855, 1 Jur. N. S. 845).

**Power of
appoint-
ment.**

As to agreements with persons having a power of appointment, see *Re Dykes' Estate*, 1869, 7 Eq. 337; *Morgan v. Milman*, 1853, 3 D. M. & G. 24.

**Married
women.**

The M. W. P. A. 1882 has diminished the importance of this section so far as married women are concerned, their

lands being frequently their statutory separate property, so that they can convey without deed acknowledged and without the husband's concurrence (see *Drummond & Davies' Contract*, 1891, 1 Ch. 524). Apart from that statute, where land stands limited to a woman and her husband in fee in remainder, she may convey under this section (*Cooper v. Gostling*, 1863, 11 W. R. 931). Section 7.

A trustee for a married woman who is absolutely entitled for her separate use cannot sell under this section (*Peters v. Leves, &c. Ry. Co.*, 1881, 18 C. D. 429).

As to guardians, see *Frend & Ware's Ry. Prec.* p. 237. Guardians.

The section only authorizes the sale of the land of a person of unsound mind by his committee (*Re Tugwell*, 1884, 27 C. D. 309), and the sanction of the judge in lunacy (see Lunacy Act, 1890, s. 120) must first be obtained (*Re Taylor*, 1849, 1 Mac. & G. 210). But a sale can be effected in the case of other persons of the classes specified in sect. 116 of the Lunacy Act, 1890, under the provisions of that Act (see sects. 116 (2), 120, and Lunacy Act, 1891, sect. 27 (4)). As to the exercise of the jurisdiction as regards the administration and management of the estates of persons of unsound mind by the masters in lunacy, see the Lunacy Act, 1891, sect. 27 (1), and Rules in Lunacy, 1892, r. 11. Lunatics.

It was held by Lord Cranworth, V.-C., in *Ex p. Flamank* (1851, 1 Sim. N. S. 260), that where land was taken from a person of unsound mind not so found, and the purchase money paid into Court, a conversion was effected and the money passed on the lunatic's death as personal estate. The money, which had been assessed by a surveyor appointed by two justices, was treated as being paid to a party seised in fee and competent to sell. But the result was dissented from by Pearson, J., in *Re Tugwell* (1884, 27 C. D. 309), upon the ground that the only person empowered by the Act to sell for the lunatic is his committee, and under similar circumstances the fund in Court was ordered to be transferred to the heir, he being willing to confirm the sale. Conversion of lunatic's estate.

Where trustees with a power of sale profess to convey under the provisions of this Act, the validity of the sale must be determined without reference to the power (*Peters v. Leves, &c. Ry. Co.*, 1881, 18 C. D. 429). Trustees.

Where the agreement relates to lands subject to a charitable trust, which are subject to the jurisdiction of Charity lands.

Section 7. the Charity Commissioners (see *Re Clergy Orphan Corp.*, 1894, 3 Ch. 145), the consent of the Commissioners must be obtained (Charitable Trusts Act, 1855, s. 29).

Land purchased by a ward of the City of London for the purpose of providing rooms for transacting the business of the ward is not subject to a charitable trust, and can be sold to a railway company without reference to this section (*Finnis & Young to Forbes & Pochin*, No. 1, 1883, 24 C. D. 587).

Powers of Persons under Disability.

Section 8.

Persons enabled to sell may also enfranchise copyholds and deal with rents and incumbrances.

VIII. The power hereinafter given to enfranchise copyhold lands, as well as every other power required to be exercised by the lord of any manor pursuant to the provisions of this or the special Act, or any Act incorporated therewith, and the power to release lands from any rent, charge, or incumbrance, and to agree for the apportionment of any such rent, charge, or incumbrance, shall extend to and may lawfully be exercised by every party hereinbefore enabled to sell and convey or release lands to the promoters of the undertaking.

As to enfranchisement, see sects. 96 and 97.

Lunatic entitled to rent charge.

Lands which were subject to a rent charge in favour of a lunatic during his life were taken by a corporation under this Act. The Court authorized the committee of the lunatic to release the land from the rent charge upon the corporation purchasing in the name of the lunatic a Government annuity of the same yearly amount for his life (*Re Brewer*, 1875, 1 C. D. 409).

Purchase Money to be ascertained by Valuation.

Section 9.

Amount of purchase money in case of party under dis-

IX. The purchase money or compensation to be paid for any lands to be purchased or taken from any party under any disability or incapacity, and not having power to sell or convey such lands except under the provisions of this or the special Act, and the compensation to be paid for any

permanent damage or injury to any such lands, shall not, except where the same shall have been determined by the verdict of a jury, or by arbitration, or by the valuation of a surveyor appointed by two justices under the provision hereinafter contained, be less than shall be determined by the valuation of two able practical surveyors, one of whom shall be nominated by the promoters of the undertaking, and the other by the other party, and if such two surveyors cannot agree in the valuation, then by such third surveyor as any two justices shall, upon application of either party, after notice to the other party, for that purpose nominate; and each of such two surveyors, if they agree, or if not, then the surveyor nominated by the said justices, shall annex to the valuation a declaration in writing, subscribed by them or him, of the correctness thereof; and all such purchase money or compensation shall be deposited in the Bank for the benefit of the parties interested, in manner hereinafter mentioned.

Section 9.

ability, and of compensation for injury (unless assessed by jury, arbitration, or surveyor appointed by justices), to be not less than valuation of two practical surveyors, with declaration of correctness annexed; and to be paid into Bank.

The words "injury to any such lands" mean "injury to lands held by persons under disability." Consequently the section applies to compensation in respect of permanent damage done to lands not taken and belonging to persons under disability (*Stone v. Corporation of Yeovil*, 1876, 2 C. P. D. 99).

Compensation for injury to lands not taken.

Where, after notice to treat, a price has been agreed upon subject to its being sanctioned by the verdict of a jury, and the company have entered, *mandamus* lies against them to compel the summoning of a jury, notwithstanding that the agreement is not under the seal of the company (*Reg. v. Irish S. E. Ry. Co.*, 1850, 1 Ir. C. L. 119).

Ascertainment by jury. *Mandamus.*

The mere fact of trustees having the price fixed by two surveyors, and afterwards agreeing to sell at that price, instead of first agreeing to sell at a certain price, and then testing the price by the valuation of two surveyors, does not invalidate the sale (*Peters v. Leices & E. Grinstead Ry. Co.*, 1881, 18 C. D. 429).

Price tested by valuation of two surveyors.

Section 9.

When dispensed with.

Procedure of section should be complied with.

If the parties interested in requiring this section to be complied with do not require the valuation, it may be dispensed with (*Dean of Ely v. Peterborough, &c. Ry. Co.*, W. N. 1869, 201).

But in general the directions of the section must be strictly complied with; otherwise the price of the land will be regarded as not being regularly fixed, and specific performance of the agreement will not be granted (*Wycombe Ry. Co. v. Donnington Hospital*, 1866, 1 Ch. 268). Thus the surveyors must meet and consider whether the price is or is not a fair price (S. C.). And the absence of a declaration in writing annexed to the valuation and subscribed by the valuers is fatal to a claim by the company for specific performance (*Bridgend Gas Co. v. Dunraven*, 1885, 31 C. D. 219); though where the purchase money had been fixed by one surveyor acting for both parties, the Court made an order on the petition of the tenant for life for investment of the amount, subject to an affidavit of a surveyor to be appointed by the petitioner that the price was sufficient (*Ex p. Rector of Adderley*, 1863, 12 W. R. 243).

Procedure where company neglect to appoint surveyor.

It has been held that if the company neglect to carry out the agreement, and do not appoint a surveyor under this section, the Court will direct an inquiry as to the sufficiency of the price agreed to be paid by the agreement (*Baker v. Met. Ry. Co.*, 1862, 31 Beav. 504). But practically this decision was reversed by Lord Westbury, C. (see note, 31 Beav. p. 511; *Bridgend Gas Co. v. Dunraven*, 1885, 31 C. D. 219), and the proper course appears to be by *mandamus* to compel the appointment of a surveyor (see *Fotherby v. Met. Ry. Co.*, 1866, L. R. 2 C. P. 188).

Appointment of trustee as surveyor.

The sale is bad if the trustees appoint one of themselves as surveyor on their behalf (*Peters v. Leices & E. Grinstead Ry. Co.*, 1881, 18 C. D. 429). The company ought not to appoint their own surveyor who in that capacity has previously valued the land (*Langham v. G. N. Ry. Co.*, 1847, 16 L. J. Ch. 437).

Section 10.

Where vendor absolutely entitled he may

Power to sell on a Chief Rent.

X. It shall be lawful for any person seised in fee of or entitled to dispose of absolutely for his own benefit any lands authorized to be purchased

for the purposes of the special Act to sell and convey such lands or any part thereof unto the promoters of the undertaking, in consideration of an annual rent charge payable by the promoters of the undertaking, *but, except as aforesaid, the consideration to be paid for the purchase of any such lands, or for any damage done thereto, shall be in a gross sum.*

Section 10.

sell in consideration of rent charge.

So much of this section as provides that, save in the case of lands of which any person is seised in fee, or entitled to dispose absolutely for his own benefit, the consideration to be paid for any lands, or for any damage done thereto, shall be in a gross sum, is repealed by the Lands Clauses Act, 1860, sect. 1; and by sect. 2 (*infra*, p. 362) the power to sell in consideration of a rent charge is extended to persons under disability, provision being made by sect. 4 for the ascertainment of the rent charge in accordance with sect. 10 of this Act. For the effect of a similar relaxation in a special Act, see *Re Lord Gerard and Beecham's Contract*, 1894, 3 Ch. 295. But it seems that in the case of charity lands the consideration should always be a lump sum. Thus a burial board constituted under the Burial Acts, 1852 and 1853, which incorporate this part of the L. C. A. 1845, was not allowed to take parish land in consideration of payment of a perpetual annual sum (*Re Barrow*, 1855, 3 W. R. 635).

So, too, may person under disability.

Burial board.

With reference to the effect upon the borrowing powers of the company of a purchase of lands subject to a rent charge, see sect. 5 of the Act of 1860.

Effect upon borrowing powers of company.

Where vendors were unwilling to sell for a rent charge, the contractor to the railway company purchased for a gross sum and resold to the company for a rent charge. It was held that such charge was good, notwithstanding that the conveyance was taken direct to the company (*Re Manchester and Milford Ry. Co.*, 1880, 15 L. J. N. C. 47).

Purchase through contractor.

A rent reserved under this section is properly called a rent charge, though no power of distress is expressly attached to it, such power being incident to it by virtue of 4 Geo. 2, c. 28, s. 5 (*Re Lord Gerard and Beecham's Contract*, 1894, 3 Ch. 295).

Distress.

Rents to be charged on Tolls, with Power of Distress.

Section 11.

Payment of rents to be charged on tolls, and recovered by action or distress.

XI. The yearly rents reserved by any such conveyance shall be charged on the tolls or rates, if any, payable under the special Act, and shall be otherwise secured in such manner as shall be agreed between the parties, and shall be paid by the promoters of the undertaking as such rents become payable; and if at any time any such rents be not paid within thirty days after they so become payable, and after demand thereof in writing, the person to whom any such rent shall be payable may either recover the same from the promoters of the undertaking, with costs of suit, by action of debt in any of the superior Courts, or it shall be lawful for him to levy the same by distress of the goods and chattels of the promoters of the undertaking.

Power of re-entry.

The deed creating the rent charge may grant a power of re-entry, and the Court will grant liberty to the owner of the rent charge to exercise his power, notwithstanding the appointment of a receiver (*Forster v. Manchester and Milford Ry. Co.*, 1880, 49 L. J. Ch. 454).

Power of distress.

Where the deed creating the rent charge gave a power to distrain for arrears, the Court gave the former owner of the land leave to distrain, notwithstanding the appointment of a receiver for the undertaking, in a suit instituted by the owner of a similar rent charge on behalf of himself and all the other owners of rent charges who should come in and contribute to the expenses of the suit (*Eyton v. Denbigh, &c. Ry. Co.*, 1868, 6 Eq. 14). But where the company had assigned their superfluous lands and chattels to trustees on trust for the creditors of the company, and a suit was instituted by a creditor, on behalf of himself and all other creditors, for administration of the trusts of the trust deed, leave to distrain was refused (*Eyton v. Denbigh, &c. Ry. Co.*, 1868, 6 Eq. 488).

Priority.

It seems that holders of rent charges created under sects. 10 and 11 have, by virtue of their lien as unpaid

vendors, a first charge in priority to the debenture holders Section 11.
 on the lands which they have sold (but, in the absence of
 express agreement, no charge on other lands which they
 have not sold), and also on the net earnings of the under-
 taking. As regards such earnings they rank *pari passu*
 as between themselves (*Eyton v. Denbigh, &c. Ry. Co.*, 1869,
 7 Eq. 439). It is doubtful whether the lien exists in
 respect of arrears of the rent charge accrued due before
 conveyance, though there seems to be no ground for the
 distinction (see *E. of Jersey v. Briton, &c. Dock Co.*, 1869,
 7 Eq. 409).

*Persons under Disability empowered to sell for
 Extraordinary Purposes.*

XII. In case the promoters of the undertaking Section 12.
 shall be empowered by the special Act to pur- Power to
purchase
lands re-
quired for
additional
accom-
modation.
 chase lands for extraordinary purposes, it shall
 be lawful for all parties who, under the provisions
 hereinbefore contained, would be enabled to sell
 and convey lands, to sell and convey the lands so
 authorised to be purchased for extraordinary
 purposes.

This section and the next seem to be intended to enable Object of
section.
 the promoters to acquire land which, at the time of the
 passing of the special Act, was not supposed to be required
 for the undertaking. (*Hooper v. Bourne*, 1877, L. R.
 3 Q. B. D. p. 272.)

By the Railways Clauses Act, 1845, s. 45, railway Railways
Clauses
Act, 1845,
s. 45.
 companies are empowered to take by agreement any land
 adjoining or near to the railway, not exceeding in the
 whole the prescribed number of acres, for extraordinary
 purposes: (that is to say)—

For the purpose of making and providing additional
 stations, yards, wharves and places for the accommo-
 dation of passengers, and for receiving, depositing
 and loading or unloading goods or cattle to be con-
 veyed upon the railway, and for the erection of
 weighing machines, toll houses, offices, warehouses
 and other buildings and conveniences.

Section 12.

For the purpose of making convenient roads or ways to the railway, or any other purpose which may be requisite or convenient for the formation or use of the railway.

Vendor not bound to see that land strictly required.

Where a purchase for extraordinary purposes is authorized, the vendor is not bound to see that the land is strictly required for such purposes, and in the absence of knowledge to the contrary and *mala fides*, he can enforce an agreement for purchase (*Eastern Counties Ry. Co. v. Hawkes*, 1855, 5 H. L. C. 331).

Sect. 127 does not apply to lands taken under this section.

Section 127, requiring the sale of superfluous lands, does not apply to lands taken under this section (*City of Glasgow Union Ry. Co. v. Caledonian Ry. Co.*, 1871, L. R. 2 H. L. Sc. 160; *cf. Hooper v. Bourne*, 1877, 3 Q. B. D. p. 281).

Power of Sale of Lands taken for Extraordinary Purposes. Restrictions as to Quantity held at one time.

Section 13.

Lands required for extraordinary purposes may be sold, and other lands up to prescribed limit afterwards acquired.

XIII. It shall be lawful for the promoters of the undertaking to sell the lands which they shall have so acquired for extraordinary purposes, or any part thereof, in such manner, and for such considerations, and to such persons, as the promoters of the undertaking may think fit, and again to purchase other lands for the like purposes, and afterwards sell the same, and so from time to time; but the total quantity of land to be held at any one time by the promoters of the undertaking, for the purposes aforesaid, shall not exceed the prescribed quantity.

Restraint in case of Purchase from Persons under Disability.

Section 14.

But only one purchase up to prescribed limit

XIV. The promoters of the undertaking shall not, by virtue of the power to purchase land for extraordinary purposes, purchase more than the prescribed quantity from any party under legal disability, or who would not be able to sell and

convey such lands except under the powers of this and the special Act; and if the promoters of the undertaking purchase the said quantity of land from any party under such legal disability, and afterwards sell the whole or any part of the land so purchased, it shall not be lawful for any party being under legal disability to sell to the promoters of the undertaking any other lands in lieu of the land so sold or disposed of by them.

Section 14.

allowed
from party
under dis-
ability.

*Municipal Corporations not to sell without Sanction of
[Local Government Board].*

XV. Nothing in this or the special Act contained shall enable any municipal corporation to sell for the purposes of the special Act, without the approbation of the *Commissioners of her Majesty's Treasury *of the United Kingdom of Great Britain and Ireland, or any three of them, any lands which they could not have sold without such approbation before the passing of the special Act, other than such lands as the company are by the powers of this or the special Act empowered to purchase or take compulsorily.

Section 15.

Municipal
corpora-
tions not
to sell
without
consent of
Local
Govern-
ment
Board,
except
lands
which
company
can take
compul-
sorily.

A general prohibition against the alienation of corporate land (subject to certain exceptions as to leases) without the approval of the Treasury is contained in sect. 108 of the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50); and for the Treasury the Local Government Act, 1888 (51 & 52 Vict. c. 41), by sect. 72 substitutes the Local Government Board. (As to the effect of the approval, see *Davis v. Corp. of Leicester*, 1894, 2 Ch. 208).

Mun.
Corp. Act,
1882.

The assent of the Lords Commissioners of the Treasury to the alienation of the property of a corporation was sufficiently signified by a letter signed by their secretary (*Arnold v. Mayor of Graysend*, 1856, 25 L. J. Ch. 776). Such consent could authorize no alienation of the corporate property further than was specified in the memorandum on which it was founded (*ibid.*).

Assent,
how
shown.

* Repealed by St. L. R. A. 1894.

THE COMPULSORY TAKING OF LANDS.

And with respect to the purchase and taking of lands otherwise than by agreement, be it enacted as follows :—

General Principles.

Contract not to exercise compulsory powers is void.

Where the legislature confers powers on any body, whether one which is seeking to make a profit for shareholders, or one acting solely for the public good, to take lands compulsorily for a particular purpose, it is on the ground that the using of that land for that purpose will be for the public good; and a contract purporting to bind such a body and their successors not to use those powers is void (*Ayr Harbour Trustees v. Oswald*, 1883, 8 App. Cas. 623, per Lord Blackburn, p. 634; see *Gray v. Liverpool & Bury Ry. Co.*, 1846, 9 Beav. 391).

But company not bound to exercise powers.

On the other hand, a company are not bound to exercise their statutory powers (*Yorkshire & N. Mid. Ry. Co. v. Reg.*, 1852, 1 E. & B. 858; *Edinburgh, &c. Ry. Co. v. Philip*, 1857, 2 Macq. 514; *Scottish N. E. Ry. Co. v. Stewart*, 1859, 3 Macq. H. L. 382, see p. 395; *Reg. v. G. W. Ry. Co.*, 1893, 62 L. J. Q. B. p. 575); though when they have once given notice to treat for land under compulsory powers, they can be compelled to proceed with the purchase (see *infra*, p. 104).

In exercising compulsory powers statutory requirements to be strictly followed.

Where the promoters of a public undertaking have authority from Parliament to interfere with private property upon certain terms, any person whose property is interfered with by virtue of that authority has a right to require that the promoters shall comply with the letter of the enactment so far as it makes provision on his behalf. No Court can remodel arrangements sanctioned, or relax conditions imposed, by statute (*Herron v. Rathmines Improvement Commissioners*, 1892, A. C. 498, per Lord Macnaghten, p. 523; *Mayor of Liverpool v. Chorley W. W. Co.*, 1852, 2 D. M. & G. p. 860).

Compulsory powers

A public company taking land under compulsory powers are bound to give to the landowner precise information as to

the quantity of land to be taken, and the way in which it is to be used; and where any doubt arises as to the extent of the power conferred by the legislature, the Court will construe it in the way most beneficial to the landowner (*Simpson v. S. Staff. W. W. Co.*, 1865, 13 W. R. 729; see *Gray v. Liverpool & Bury Ry. Co.*, 1846, 9 Beav. 391; *Scales v. Pickering*, 1828, 4 Bing. p. 452; *Parker v. G. W. Ry. Co.*, 1844, 7 M. & Gr. p. 288). Though at the same time an Act empowering a company to contract for purposes of public advantage ought not to receive a narrow construction (*Dover Gas Co. v. Mayor of Dover*, 1855, 7 D. M. & G. p. 555).

construed
in favour
of land-
owner.

It has been doubted whether, when it is evident that the line of a railway company cannot be fully completed, the company have a right compulsorily to take any part of the property on the proposed line (*Gray v. Liverpool, &c. Ry. Co.*, 1846, 9 Beav. 391; see per Lord Eldon in *Blake-more v. Glamorganshire Canal Navigation*, 1832, 1 My. & K. p. 164; and *Salmon v. Randall*, 1838, 3 My. & Cr. p. 443, and cases there cited).

Doubt as
to exercise
of powers
when it is
evident
that
under-
taking
cannot be
completed.

It is no objection to the exercise of a statutory power that the company gain thereby an incidental benefit which was not contemplated by the statute (*Sterens v. Met. Dist. Ry. Co.*, 1885, 29 C. D. 60).

Incidental
benefit no
objection
to exercise
of power.

Where a railway company have given notice to take land for some object which is clearly within their compulsory powers, the Court will not interfere to restrain them merely on the ground that they might obtain the same object in some other way without taking the land (*Lamb v. N. London Ry. Co.*, 1869, 4 Ch. 522, p. 530).

Power
exercis-
able
though
object
attainable
otherwise.

Where a railway company take land in excess of their powers, it seems that the Court will not grant relief by injunction if the quantity and value of the land are small; but will give damages instead (*Douling v. Pontypool, &c. Ry. Co.*, 1874, 18 Eq. 714).

Land
taken in
excess of
powers.

Where a company, acting *bonâ fide*, take possession of property by mistake, and it is merely a question of value between the company and the owner, the Court will not interfere by injunction to prevent the company from remaining in possession of the land, unless there has been culpable negligence on their part (*Wood v. Charing Cross Ry. Co.*, 1863, 33 Beav. p. 294).

Land
taken by
mistake.

Where the special Act provided that the promoters should not "take" any of the scheduled lands until certain

Pre-
liminary
steps may

be taken although requirements not complied with.

requirements were complied with, it was held that they might before compliance take all the steps preliminary to conveyance, and they could therefore serve a notice to treat and summon a jury (*Spencer v. Metrop. B. W.*, 1882, 22 C. D. 142).

Powers of different companies.

As to a conflict between the compulsory powers of different companies in respect of the same land, see *M. S. & L. Ry. Co. v. G. N. Ry. Co.*, 1851, 9 Hare, 284; *Bristol, &c. Ry. Co. v. Somerset & Dorset Ry. Co.*, 1874, 22 W. R. 601.

Injunction.

A company will be kept within its powers by injunction (*R. Dun Navigation Co. v. N. Mid. Ry. Co.*, 1838, 1 Ry. Cas. pp. 153, 154).

Extent of Company's Proprietary Rights.

Power of using land.

A railway company authorized by their special Act to acquire land for the purpose of the railway and works, have also the implied power of using land so acquired in any manner which is not an infringement of the rights of other persons, and which is not incompatible with the purposes for which the company was constituted. The *ratio decidendi* of Malins, V.-C., in *Norton v. L. & N. W. Ry. Co.* (1878, 9 C. D. 623; see 13 C. D. 268), has been disapproved of (*Foster v. L. C. & D. Ry. Co.*, 1895, 1 Q. B. 711; *Onslow v. M. S. & L. Ry. Co.*, 1895, 64 L. J. Ch. 355). In *Norton v. L. & N. W. Ry. Co.* it was held that a company could not, by erecting hoardings upon land, or by other means, prevent adjoining owners from whom the land was purchased from acquiring easements over it by prescription; but it has been said that the judgment of Malins, V.-C., to this effect went upon the ground that the company were trespassing (*Bonner v. G. W. Ry. Co.*, 1883, 24 C. D. 1, at p. 9). In this last case it was held that a railway company were entitled to take measures (as by erecting a screen) to prevent an adjoining owner from acquiring a right to light over the land of the company (see also *Dover Harbour v. S. E. Ry. Co.*, 1852, 9 Hare, p. 495).

Letting of arches.

Where a railway is constructed on arches erected over land of which the company have acquired the fee simple, the company are at liberty to let the interiors of the arches on short tenancies, reserving power to resume possession when they deem it necessary for the purposes of the railway (*Foster v. L. C. & D. Ry. Co.*, 1895, 1 Q. B. 711).

The principle of this case overrides the earlier theory that the exercise of the proprietary rights of the company was to be strictly confined to the purposes expressed in the special Act (*Bostock v. N. Staff. Ry. Co.*, 1856, 3 Sm. & G. 283; see *Bird v. Eggleton*, 1885, 29 C. D. p. 1017).

Companies created under Act of Parliament and owning land have in general a right to all the incidents of proprietorship. Where the land borders on a stream they have accordingly the ordinary riparian rights (*Swindon Waterworks Co. v. Wilts & Berks Canal Co.*, 1875, L. R. 7 H. L. 697; see *Earl of Sandwich v. G. N. Ry. Co.*, 1878, 10 C. D. 707, and cf. *A.-G. v. G. E. Ry. Co.*, 1870, 18 W. R. 1187). And they are not liable for diversion of underground water from land of an adjoining owner in consequence of acts done—*e.g.*, construction of a tunnel—in the exercise of the ownership of their own land (*Galgay v. Gt. S. & W. Ry. Co.*, 1854, 4 Ir. C. L. R. 456). Riparian rights.

A company until they require to use the land for the purposes of the railway may use a right of way incident to the premises in their existing state (*Bayley v. G. W. Ry. Co.*, 1884, 26 C. D. 434). Right of way.

A railway company, unless specially empowered to do so, cannot, whether for value or otherwise, alienate for any purposes except the purposes of the special Act any portion of the land, not being superfluous land within sect. 127, and not being land taken for extraordinary purposes within sect. 45 of the R. C. A. 1845, nor any easement over the same (*Mulliner v. Mid. Ry. Co.*, 1879, 11 C. D. 611; but as to lands acquired by agreement, see *City of Glasgow Union Ry. Co. v. Caledonian Ry. Co.*, 1871, L. R. 2 Sc. 160, per Lord Westbury, p. 165). As to the alienation of superfluous lands, see sects. 127, 128. Alienation of lands not superfluous not permitted.

But a title against the company can be gained by adverse possession, whether the land is or is not superfluous. The mere fact that land of a railway company is required for the purposes of their undertaking, and is not superfluous land, does not prevent an occupier who has exclusive adverse possession for twelve years from acquiring a title under the statute (*Bobbett v. S. E. Ry. Co.*, 1882, 9 Q. B. D. 424; *Norton v. L. & N. W. Ry. Co.*, 1878, 13 C. D. 268; *Rosenberg v. Cook*, 1881, 8 Q. B. D. 162; and see *Re Duffy's Estate*, 1897, 1 Ir. R. 307, stated *infra*, p. 330). Possessory title against company.

(1.) CAPITAL.

§ 16. Capital to be subscribed before Powers put in Force.

§ 17. What evidence of subscription of Capital is sufficient.

*Capital to be subscribed before Powers put in Force.***Section 16.**

Whole
capital to
be sub-
scribed.

XVI. Where the undertaking is intended to be carried into effect by means of a capital to be subscribed by the promoters of the undertaking, the whole of the capital or estimated sum for defraying the expenses of the undertaking shall be subscribed under contract binding the parties thereto, their heirs, executors and administrators, for the payment of the several sums by them respectively subscribed, before it shall be lawful to put in force any of the powers of this or the special Act, or any Act incorporated therewith, in relation to the compulsory taking of land for the purposes of the undertaking.

Applica-
tion of
section.

Where the special Act gave to one railway company power to purchase an easement over the property of another railway company, the power being the subject of special provisions, it was held that the power was complete in itself and that this section did not apply (*G. W. Ry. Co. v. Swindon and Cheltenham Ry. Co.*, 1884, 9 App. Cas. 787).

Extension
Act.

This section is not applicable to an extension Act, where the funds are to be furnished by the company (*Reg. v. G. W. Ry. Co.*, 1852, 1 E. & B. 253).

Where a special Act authorising the making of a branch line incorporated this Act, "except so far as the provisions thereof were expressly varied," and proceeded to enact that fresh capital might be raised not exceeding a certain sum, it was held upon the whole scope of the Act,

especially having regard to the fact that the company was already established, that sects. 16 and 17 were inapplicable (*Weld v. S. W. Ry. Co.*, 1862, 32 Beav. 340). Section 16.

Apart from this section a person whose property is required to be taken cannot restrain the promoters from taking steps to obtain possession until they have shown means to satisfy the price (*Salmon v. Randall*, 1838, 3 M. & Cr. 439). On the other hand, if the company have given notice to treat, they cannot refuse to go on with the purchase on the ground that they have not the means of paying for the land (*Reg. v. Commissioners of Woods and Forests*, 1850, 15 Q. B. p. 773; see *Reg. v. L. & N. W. Ry. Co.*, 1851, 6 Ry. Cas. 634). Effect of want of means to pay for land.

Where reliance is placed by the company on this section to justify them in refusing to exercise a statutory power, it is essential to show that the power in question is a compulsory power. Hence it is no answer to an action against a railway company for not issuing their warrant under sect. 39 of this Act for the assessment of compensation for land, of their intention to purchase which they have given notice, that the undertaking was intended to be carried into effect by means of a certain capital, and that the whole amount was not subscribed as required by this section—the notice to treat not necessarily being an exercise of the powers of the Act, “in relation to the compulsory taking of land.” It may be followed by a voluntary sale (*Guest v. Poole & Bournemouth Ry. Co.*, 1870, L. R. 5 C. P. 553; see *G. W. Ry. Co. v. Swindon & Cheltenham Ry. Co.*, 1884, 9 App. Cas. 787, as to taking an easement; *Re Uxbridge and Rickmansworth Ry. Co.*, 1890, 43 C. D. pp. 562, 563; *Ford v. Plymouth, &c. Ry. Co.*, W. N. 1887, p. 201). Section applies only to compulsory power.

A company are not estopped from pleading that the capital has not been subscribed, by the fact, that, under their compulsory powers, they have taken other land from another person. The plea of estoppel is bad, the matter disclosed by it being *res inter alios acta* (*Reg. v. Ambergate, &c. Ry. Co.*, 1853, 1 E. & B. 372). Taking other lands no estoppel under this section.

Evidence of the Subscription of the Capital.

XVII. A certificate under the hands of two justices, certifying that the whole of the subscribed sum has been subscribed, shall be sufficient Section 17.
Certificate of justices

Section 17. evidence thereof; and on the application of the promoters of the undertaking, and the production of such evidence as such justices think proper and sufficient, such justices shall grant such certificate accordingly.

to be sufficient evidence.

Certificate evidence of subscription of capital.

The magistrates' certificate is conclusive evidence of the subscription of the capital (*Ystalyfera Iron Company v. Neath, &c. Ry. Co.*, 1873, 17 Eq. 142). In *Landowners, &c. Co. v. Ashford* (1880, 16 C. D. 411), under a provision in the special Act for a certificate by directors of the company of the due execution of the works of the company, it was held that such certificate was *prima facie* but not conclusive evidence.

(2.) NOTICE TO TREAT.

- § 18. Notice to treat for lands.
- § 19. Service on Individuals.
- § 20. Service on Corporations Aggregate.

Notice to treat for Lands.

XVIII. When the promoters of the undertaking shall require to purchase or take any of the lands which by this or the special Act, or any Act incorporated therewith, they are authorized to purchase or take, they shall give notice thereof to all the parties interested in such lands, or to the parties enabled by this Act to sell and convey or release the same, or such of the said parties as shall, after diligent inquiry, be known to the promoters of the undertaking, and by such notice shall demand from such parties the particulars of their estate and interest in such lands, and of the claims made by them in respect thereof; and every such notice shall state the particulars of the lands so required, and that the promoters of the undertaking are willing to treat for the purchase thereof, and as to the compensation to be made to all parties for the damage that may be sustained by them by reason of the execution of the works.

Section 18.

Promoters requiring to purchase lands must give notice to parties interested stating lands required, and that promoters are willing to treat.

1. Lands which may be taken.

In order that lands may be taken, it is necessary (i) that they shall be required for the purposes of the undertaking, and (ii) that they shall be authorized to be taken.

The land sought to be taken must be *bonâ fide* required (i) Land must be

Section 18. the surveyor, or engineer, or other officer of the company, unless the other side can show that they are not acting *bonâ fide* (per Jessel, M. R., in *Errington v. Met. Dist. Ry. Co.*, 1882, 19 C. D. p. 571; *Kemp v. S. E. Ry. Co.*, 1872, 7 Ch. 364). But the affidavit must show the purpose for which the land is required, so that the Court may judge whether it is *bonâ fide* required (*Flower v. L. B. & S. C. Ry. Co.*, 1865, 2 Dr. & Sm. 330).

Taking
lands
under
57 Geo. 3,
c. xxix.

Where lands require to be taken for improvements in the metropolis under 57 Geo. 3, c. xxix., an adjudication of the vestry or district board of works (replacing the Commissioners of Sewers, 18 & 19 Vict. c. 120, s. 90), that the lands are required, is a necessary preliminary (*Thomas v. Daw*, 1866, 2 Ch. 1); but the vestry, &c., are not entitled to adjudicate that the whole of a piece of land is necessary for the improvements when they only intend to use a small part of it for that purpose; though if they make such an adjudication in the belief that they will require the whole, the correctness of the adjudication cannot be questioned (*Gard v. Commissioners of Sewers*, 1885, 28 C. D. 486). And see also, as to adjudication by the Commissioners, *Lynch v. Commissioners of Sewers*, 1886, 32 C. D. 72.

(ii) Lands
must be
authorized
to be
taken.

The authority to take the lands is the special Act, and when lands are properly described in the special Act or in the deposited plans and books of reference referred to therein, the company may take them, notwithstanding that they exceed the lands which have been the subject of preliminary negotiation. Hence, if the usual notice be served upon the landowner before applying to Parliament for power to take the land, and the Act, when obtained, gives power to take more than was comprised in the notice, the company are not restricted to the quantity comprised in the notice (*Re Corp. of Huddersfield and Jacomb*, 1874, 10 Ch. 92).

The company are only bound by the notices given and the plans deposited in pursuance of the standing Parliamentary Orders so far as these are incorporated in the special Act; and they are overridden if at variance with the Act (*N. British Ry. Co. v. Tod*, 1846, 12 Cl. & F. 722; 4 Ry. Cas. 449; *Reg. v. Cal. Ry. Co.*, 1850, 16 Q. B. 19).

Similarly the company, if authorized by the special Act, may stop up a street which, according to the deposited plans, was to be crossed on an arch (*A.-G. v. G. E. Ry. Co.*, 1872, 7 Ch. 475). And the powers of the special

Act to take lands may be exercised notwithstanding that the names of persons interested have been omitted from the books of reference (*Kemp v. West End, &c. Ry. Co.*, 1855, 1 Kay & J. 681). Section 18.

In general, the deposited plans, if incorporated, are only binding to the extent of the *datum* line; they are not to be referred to for the purpose of surface levels (*Beardmer v. L. & N. W. Ry. Co.*, 1849, 1 Mac. & G. p. 115).

A memorandum upon the deposited plan, that the promoters intend to divert a road, does not give them the right to do so (*Att.-Gen. v. G. N. Ry. Co.*, 1850, 4 De G. & Sm. 75).

The limit of deviation has reference to the line of rails, and if there are pieces of land outside the limit of deviation, but properly referred to in the book of reference and deposited plans, and if those pieces of land are *bonâ fide* wanted for the purpose of making the line within the limit of deviation, there is no authority that such pieces of land cannot be properly taken by the railway company (*Finck v. L. & S. W. Ry. Co.*, 1890, 44 C. D. p. 351). Land outside limits of deviation.

But if lands are to be taken beyond the limits of deviation the boundary must be sufficiently delineated in the deposited plans; otherwise the company may be restrained from taking any land beyond the limits of deviation (*Wrigley v. L. & Y. Ry. Co.*, 1863, 4 Giff. 352), though they will be allowed to take, at any rate, up to the limits of deviation (*Dowling v. Pontypool, &c. Ry. Co.*, 1874, 18 Eq. 714).

Where the land to be taken was nursery ground, and a boundary was marked on one side of the limits of deviation in the deposited plan, but on the other side no boundary was marked, the existing paths being shown for a short distance beyond the limit and then breaking off, it was held that no land was delineated beyond the limit on that side, and hence a notice to treat for land beyond that limit was bad (*Protheroe v. Tottenham & Forest Gate Ry. Co.*, 1891, 3 Ch. 278).

Where the A. company proposes to take lands which are already occupied by the railway of the B. company, the necessary power is not given by the mere inclusion of the lands in the plans and books of reference deposited under the A. company's special Act. There must be express enactment enabling the A. company to purchase, or the B. company to sell the land in question (*Reg. v.* Taking of lands of another railway company.

Section 18. *South Wales Ry. Co.*, 1850, 14 Q. B. 902; *Dublin, &c. Ry. Co. v. Navan, &c. Ry. Co.*, 1871, Ir. R. 5 Eq. 393); *contra*, where the B. company have only a power to purchase not yet exercised, and the lands are scheduled in the special Act of the A. company (*Regent's Canal, &c. Co. v. London School Board*, W. N. 1885, p. 4).

Correction
of errors
in plans,
&c.

As to the correction, in the case of railway companies, of omissions, misstatements, or errors in the description of lands, or of the owners, lessees or occupiers, in the deposited plans and books of reference, or in the schedule to the special Act, see sect. 7 of the R. C. A. 1845.

2. Notice to treat.

Notice to
be given to
all persons
interested.

Upon exercising their compulsory powers the company must give notice to treat to all persons having any interest in the land, and, before going into possession, either the compensation money must be ascertained and paid, or proceedings must be taken under sect. 85. The notice does not require to be stamped as an agreement (*Rawlings v. Met. Ry. Co.*, 1868, 18 L. T. 871; *Re Manchester, &c. Ry. Co.*, 1854, 19 Beav. 365), and need not be under seal. It can be signed by two directors or the secretary (Comp. Clauses Act, 1845, s. 139).

Where a company have given notice to treat they will be restrained from entering into possession by arrangement with the occupying tenant before the compensation to the owner has been paid, or duly secured under sect. 85 (*Armstrong v. Waterford, &c. Ry. Co.*, 1846, 10 Ir. Eq. 60).

Substi-
tutes for
notice to
treat.

The publication of the requisition under sect. 6 of the schedule to the Artisans and Labourers' Dwellings Improvement Act, 1875 (38 & 39 Vict. c. 36), is analogous to the notice to treat under this Act, and a landowner affected by it cannot afterwards alter his position (*Wilkins v. Mayor of Birmingham*, 1883, 25 C. D. 78); but *contra* as to service of a notice under sect. 176 of the Public Health Act, 1875, and no action lies for failure to proceed under such a notice (*Burgess v. Bristol Sanitary Authority*, 1886, 2 T. L. R. 719).

The publication under the Railways (Ireland) Act, 1851 (14 & 15 Vict. c. 70), s. 8, of the notice of the arbitrator's appointment is equivalent to service of notice to treat under this Act, and where the premises were subject to leases, the value of the reversion was to be

ascertained as at that date (*Re Doync's Traverses*, 1888, 24 L. R. Ir. 287). Section 18.

The notice to treat must be given to all persons having a legal or equitable interest in the land which will be interfered with by the entry of the company. It must be given accordingly to mortgagees, legal or equitable (*Martin v. L. C. & D. Ry. Co.*, 1866, 1 Ch. 501; see *University, &c. Society v. Met. Ry. Co.*, W. N. 1866, 167); though where the company purchased from a person who had himself only a contract for purchase, and the price was fixed with the cognizance of the head vendor, the head vendor, on rescinding his contract, was not allowed to have the price assessed afresh (*L. & Y. Ry. Co. v. Higgins*, W. N. 1877, p. 49). But incorporeal rights in land, as easements (*Duke of Bedford v. Dawson*, 1875, 20 Eq. 353), or contractual rights, as restrictive covenants, are not the subject of notice to treat, and for interference with them compensation is recoverable under sect. 68 (*infra*, pp. 177, 178). Persons entitled to notice.

A right of pre-emption is a mere personal right, and the company can take the land subject to it without paying compensation, notwithstanding that it is vested in an owner of adjoining land which the company are taking (*Clout v. Met. & Dist. Rys. Committee*, 1883, 48 L. T. 257).

No compensation is payable to a tenant whose tenancy is determined by proper notice to quit (*Syers v. Metrop. Board of Works*, 1877, 36 L. T. 277; *Ex p. Nadin*, 1848, 17 L. J. Ch. 421); nor is a tenant who has no right of renewal, but who has laid out money on the lessor's assurance that he will not be disturbed at the end of his term, entitled to compensation (*R. v. Liverpool & Manchester Ry. Co.*, 1836, 4 A. & E. 650). But the company take subject to any special equities which may exist between the landlord and his tenant. Thus where A., who was in occupation of land under a building agreement determinable if the buildings were not completed by 30th November, 1885, refrained from proceeding with the buildings in pursuance of a direction given by his landlord's agent in view of a projected railway, and the railway company took possession of the premises after that date, it was held that A., notwithstanding the agreement had expired, had an interest in the land for which he was entitled to compensation; the agent's direction to suspend building raised an equity against the landlord to prevent his ejecting A. at the end of the term until a reasonable time had been allowed for Tenants.

Section 18. completing the building, and the company took subject to this equity (*Birmingham, &c. Land Co. v. L. & N. W. Ry. Co.*, 1888, 40 C. D. 268; see *Ex p. Luntley*, 1865, 13 L. T. 490).

Where the interest of the tenant does not exceed a yearly tenancy the payment of compensation is regulated by sect. 121.

As to service of notice to treat upon new tenants who have come into possession as purchasers from the tenants upon whom notice has been already served, see *Re Chilworth Gunpowder Co. and Manchester Ship Canal Co.* (1891, 8 T. L. R. 79). The notice, it seems, should not be qualified by words making the compensation payable under it subject to compensation payable under the earlier notice.

Second
mort-
gagee.

If the company have given notice to treat to a second mortgagee and then purchase the land from the first mortgagee under a power of sale, the second mortgagee cannot bring an action for arrears due under his security or for specific performance (*Hill v. G. N. Ry. Co.*, 1854, 5 D. M. & G. 66). Apparently the second mortgagee should compel the company to proceed under the notice to treat (see *Browne & Theobald on Railways*, p. 148).

Soil of
public
street.

A person entitled to the sub-soil under a public street is in strictness entitled to notice before the sub-soil is taken (*Ramsden v. Manchester, &c. Ry. Co.*, 1848, 5 Ry. Cas. 552; *infra*, p. 258; *Goodson v. Richardson*, 1873, 9 Ch. 221), unless the special Act entitles the company to take it without notice; and in the latter case a *cul-de-sac* dedicated to the public is in the same position as a public street (*Souch v. E. London Ry. Co.*, 1873, 16 Eq. 108; see 22 W. R. 566).

Cul-de-sac.

Descrip-
tion of
land in
notice.

The land must be accurately described in the notice to treat, and upon an inquiry before a jury no deviation from the lands so described is permissible (*Stone v. Commercial Ry. Co.*, 1839, 4 My. & Cr. 122; see *Kemp v. London & Brighton Ry. Co.*, 1838, 1 Ry. Cas. 495).

It is sufficient if the notice and plan annexed thereto show in fact what lands are proposed to be taken, although they do not follow exactly the denotation in the deposited plans (*Dowling v. Pontypool, &c. Ry. Co.*, 1874, 18 Eq. 714); and although the measurements are not exactly given (*Sims v. Commercial Ry. Co.*, 1838, 1 Ry. Cas. 431).

Second
notice to
treat for

The company having given notice to treat describing a certain quantity of land, which turns out to be insufficient,

are not precluded from giving a second notice to treat for an additional quantity (*Stamps v. Birmingham, &c. Ry. Co.*, 1848, 7 Hare 251; 2 Phil. 673; *Simpson v. Lancaster & Carlisle Ry. Co.*, 1847, 15 Sim. 580). And there is no distinction in this respect between the severance of land vertically and its severance in horizontal *strata*; consequently a railway company having already acquired surface lands may subsequently purchase compulsorily the minerals under those lands (*Errington v. Metrop. Dist. Ry. Co.*, 1882, 19 C. D. 559).

Section 18.
different
quantity.

It seems that the landowner by negotiating on the footing of the notice to treat will waive any objection that might be taken to it: provided he is fully informed as to the object of the company in taking it (*Lynch v. Commissioners of Sewers*, 1886, 32 C. D. 72).

Waiver of
irregu-
larity.

If the notice is bad, but the landowner gives a counter-notice which may reasonably have the effect of leading the company to suppose that they may safely proceed with their works, the Court will not by injunction restrain the company from so proceeding (*Pinchin v. London & Blackwall Ry. Co.*, 1854, 5 D. M. & G. p. 865).

Where the company have unlawfully entered into possession, an injunction will be granted to restrain their retaining possession, notwithstanding that the railway has been constructed on the land (*Perks v. Wycombe Ry. Co.*, 1862, 3 Giff. 662; see *Goodson v. Richardson*, 1873, 9 Ch. 221; *McRae v. L. B. & S. C. Ry. Co.*, 1868, 18 L. T. 226), provided the landowner applies promptly and does not take the law into his own hands (*Lind v. I. of W. Ferry Co.*, 1862, 1 N. R. 13; see cases under sect. 84, *infra*, p. 260). But a landowner who has acquiesced in the entry cannot recover possession, provided the company are ready to pay proper compensation (*D. of Beaufort v. Patrick*, 1853, 17 Beav. 60; *Somersetshire Coal Canal Co. v. Harcourt*, 1858, 2 De G. & J. 596; *Mold v. Wheatcroft*, 1859, 27 Beav. 510).

Remedy in
case of
unlawful
entry.

But after the company have served notice to treat upon, and have entered with the consent of, a person apparently entitled, the mere raising of adverse claims is not a ground for interfering by injunction with the possession of the company, provided the company undertake to proceed under sect. 38 (*Alston v. Eastern Counties Ry. Co.*, 1855, 3 W. R. 559).

Section 18.**3. The consequences of the notice.**

How far
the notice
consti-
tutes a
contract.

In *Walker v. Eastern Counties Ry. Co.* (1848, 6 Hare, 594) it was decided that notice to treat constitutes a contract on the part of the company, for specific performance of which an action can be brought by the landowner; but it is now settled that this is incorrect (see per Lord Hatherley, L. C., in *Harding v. Met. Ry. Co.*, 1872, 7 Ch. p. 158). The notice to treat fixes the lands which are to be taken, and entitles either party to go on to fix the price, but until the price has been ascertained the parties are not regarded as in the position of vendor and purchaser for the purpose of the remedy by specific performance. When, on the other hand, the price is fixed the whole relation of vendor and purchaser is constituted as in a regular and formal contract, and specific performance is enforced (*Regent's Canal Co. v. Ware*, 1857, 23 Beav. 575).

The notice to treat is intended to fix the particular lands which the company require, and to bring the parties together in order that they may, if they can, come to an agreement as to terms; and if they cannot, then that the value of the lands shall be settled by arbitration, or by a jury; but upon the mere notice there is no contract of which specific performance can be enforced (*Adams v. London & Blackwall Ry. Co.*, 1850, 2 Mac. & G. 132).

The notice to treat constitutes, as between the landowner and the company, the relation of vendor and purchaser to a certain extent and for certain purposes, and some of the consequences which flow from an actual contract also follow upon the notice to treat; such as that the particular lands which the company are to take, and which the landowner must give up to the company after certain steps prescribed by this Act shall have been taken, are fixed, and that neither party can get rid of the obligation, the one to take and the other to give up the lands specified in the notice; but in no other sense and to no further extent does the notice constitute a contract, at least on the part of the landowner (per Kindersley, V.-C., in *Haynes v. Haynes*, 1861, 1 Dr. & Sm. p. 450).

The effect of the notice to treat is to create a relation between the company and the landowner analogous to that of purchaser and vendor; but till the price is ascertained the land remains the property of the landowner in equity as

well as at law. Each side, however, has acquired the right to have the price ascertained in accordance with the statute (see the judgment of Lord Blackburn in *Tiverton & N. Devon Ry. Co. v. Loosemore*, 1884, 9 App. Cas. p. 493). Section 18.

When the price is ascertained there are all the elements of a complete agreement, and it becomes a bargain made under legislative enactment between the railway company and those over whom they were authorized to exercise their power (per Lord Hatherley, C., in *Harding v. Met. Ry. Co.*, 1872, 7 Ch. 154, p. 158). And specific performance will be ordered as in an ordinary case of vendor and purchaser (*S. C.*).

The above result follows whether the price is fixed by agreement, by award, or by the verdict of a jury. Mode of
ascertain-
ment of
price is im-
material.

After service of notice to treat an agreement settling the price will bind the company, although not under seal, and apparently though made by parol only (*Smith v. Dublin & Bray Ry.* 1853, 3 Ir. Ch. Rep. 225).

Where the notice to treat has been followed by an award fixing the amount of purchase and compensation money, specific performance will lie (*Mason v. Stokes Bay Ry. Co.*, 1862, 11 W. R. 80; *Harding v. Met. Ry. Co.*, 1872, 7 Ch. 154). In such a case a contract satisfying the Statute of Frauds is not necessary (*Ex p. Hawkins*, 1843, 13 Sim. 569; *Watts v. Watts*, 1873, 17 Eq. 217). Specific
perform-
ance.

Where, after notice to treat, the price was settled by a jury and possession taken, specific performance was decreed at the suit of the company (*Nash v. Worcester Improvement Commissioners*, 1855, 1 Jur. N. S. 973; *Regent's Canal Co. v. Ware*, 1857, 23 Beav. 575). Price
settled by
jury and
possession
taken.

It follows that service of notice to treat does not operate as a conversion of the land in the hands of the landowner so as, upon ascertainment of the price and completion of the purchase after his death, to throw the proceeds of sale into his personal estate (*Haynes v. Haynes*, 1861, 1 Dr. & Sm. 426; *Re Arnold*, 1863, 32 Beav. 591; *Righton v. Righton*, 1866, 36 L. J. Ch. 61). Conver-
sion not
effected
until price
settled.

But it is otherwise where the price is fixed in the landowner's life, and the proceeds of sale pass as personalty, though rents accruing between his death and the completion of the purchase go to the heir or devisee (*Watts v. Watts*, *supra*; *Ex p. Hawkins*, 1843, 13 Sim. 569; *Re Manchester, &c. Ry. Co.*, 1854, 19 Beav. 365; see *Galliers v. Allen*, 1843, 13 Sim. 577n).

Section 18.

Notice to treat does not constitute a debt.

A mere notice to treat, upon which nothing has been done, does not constitute a debt, owing or accruing, which can be attached under R. S. C. Ord. 45 (*Richardson v. Elmit*, 1876, 2 C. P. D. 9); and it is the same even though the purchase money has been fixed and the title accepted, until a conveyance has been executed or tendered (*Howell v. Metrop. Dist. Ry. Co.*, 1881, 19 C. D. 508).

Relation of parties where land taken without notice to treat.

Where no notice to treat is given, but the land is taken under the compulsory powers, and money is paid into Court as security for the purchase money when duly ascertained, the parties are not in the position of ordinary vendor and purchaser, and the company cannot call upon the landowner to produce his title for their investigation. (*Martin v. L. C. & D. Ry. Co.*, 1868, 17 L. T. 487).

Property may not be put up to auction.

After notice to treat, the landowner may not put up the property for sale by auction (*Met. Ry. Co. v. Woodhouse*, 1865, 13 W. R. 516).

Parties may not alter position after notice to treat.

It has been held over and over again that from the time when the notice to treat is served each party must abstain from altering his position. Any interest subsequently acquired by or from the person on whom the notice to treat has been served is not a subject for compensation (per Mathew, J., in *Wilkins v. Mayor of Birmingham*, 1883, 25 C. D. p. 80; see *Norwich Ry. Co. v. Wodehouse*, 1849, 11 Beav. 382).

Where, therefore, an owner after notice to treat entered into an agreement with a person who for several years had occupied part of the property as a weekly tenant, and to whom he had made repeated verbal promises to grant a lease, for a lease to him for a term of three years, it was held that the tenant was not entitled to compensation for the interest created by the agreement (*Re Marylebone Improvement Act, Ex p. Edwards*, 1871, 12 Eq. 389; see *City of Glasgow, &c. Ry. Co. v. M'Ewen & Co.*, 1870, 8 Sess. Cas. (3rd Series), 747; *Norfolk Ry. Co. v. Bayes*, 1849, 13 Jur. 435). But it may be different in the case of a tenant who comes in after the notice to treat without knowledge of it (*Carter v. G. E. Ry. Co.*, 1863, 8 L. T. 197).

A purchase of the land after notice to treat gives the purchaser only an interest in the compensation (*Carnochan v. Norwich, &c. Ry. Co.*, 1858, 26 Beav. 169, 171).

It seems that an owner is not bound to stop repairs to premises upon notice that proceedings are being taken to

obtain parliamentary sanction to their compulsory acquisition, and the amount expended after such notice is not to be excluded from compensation (*Higgins v. Lord Mayor of Dublin*, 1891, 28 L. R. Ir. 484). Section 18.

After notice to treat has been given, the landowner can compel the company to proceed with the purchase in one of the modes specified in the Act, and his proper course is to apply for a *mandamus*. If the company do nothing he cannot recover compensation under sect. 68 (*Burkinshaw v. Birmingham, &c. Ry. Co.*, 1850, 5 Ex. 475). Where, however, the notice to treat had been followed by an agreement between the parties, and the company entered, and the agreement was afterwards repudiated on both sides, the Court refused to compel the company to summon a jury, holding that under the circumstances the notice *per se* did not give the Court jurisdiction, and that the rights of the parties were to be regulated by the provisions of sects. 68 and 85 (*Adams v. London & Blackwall Ry. Co.*, 1850, 2 Mac. & G. 118). Land-owner may compel the company to proceed under notice.

Where the special Act provides for six months' notice of the intention to take lands being given, the company must proceed with the purchase within a reasonable time after the expiration of the six months, and if the landowner has been put to expense, he will be entitled to damages and a *mandamus* (*Morgan v. Met. Ry. Co.*, 1868, L. R. 4 C. P. 97).

But the company are not bound to exercise their statutory powers, and, in the absence of notice to treat, *mandamus* does not lie to compel the company to purchase land (*Reg. v. L. & N. W. Ry. Co.*, 1851, 6 Ry. Cas. 634). Company not bound to purchase.

A trading company having given notice to treat for land under compulsory powers cannot withdraw it, even though they offer to pay all costs incurred in consequence of the notice (*R. v. Hungerford Market Co.*, 1832, 4 B. & Ad. 327). Hence, if a notice is withdrawn and a second notice given, the second notice is a nullity (*Taicney v. Lynn & Ely Ry. Co.*, 1847, 4 Ry. Cas. 615). Notice cannot be withdrawn.

The same rule applies to bodies authorized to take land for a public purpose (*Birch v. Vestry of Marylebone*, 1869, 17 W. R. 1014). But an exception is allowed in the case of commissioners acting on behalf of the executive government (*Steele v. Mayor of Liverpool*, 1866, 14 W. R. 311; *Reg. v. Commissioners of Woods and Forests*, 1850, 15 Q. B. 761). Unless given on behalf of Government.

Section 18. As to withdrawal of the notice where the company do not accede to a counter-notice under sect. 92, see the cases referred to under that section (*infra*, p. 282).

Abandonment of notice. After long delay the notice will be considered to have been abandoned (*Hedges v. Met. Ry. Co.*, 1860, 28 Beav. 109).

Leaseholds. Where leasehold land is taken, the company are bound to accept an assignment and enter into the usual covenant of indemnity against the covenants of the lease (*Harding v. Met. Ry. Co.*, 1872, 7 Ch. 154); but the indemnity is in fact not required, inasmuch as the liability of the lessee is terminated on the taking of the lands under statutory powers, and the remedy of the lessor, if any, is under sect. 68. Thus the lessee is discharged from a covenant against assignment without the consent of the lessor (*Baily v. De Crespigny*, 1869, L. R. 4 Q. B. 180), and the necessity for a licence is taken away (*Slipper v. Tottenham, &c. Ry. Co.*, 1867, 4 Eq. 112); though in an Irish case it was held that the company, on taking land under such circumstances for temporary use only, ought to treat with the lessor also (*Legg v. Belfast, &c. Ry. Co.*, 1850, 1 Ir. C. L. R. p. 124, note). The lessee is liable for breaches of covenant committed after notice to treat and before assignment to the company (*Mills v. E. London Union*, 1872, L. R. 8 C. P. 79).

Service of Notice to Treat on Individual.

Section 19. XIX. All notices required to be served by the promoters of the undertaking upon the parties interested in or entitled to sell any such lands shall either be served personally on such parties or left at their last usual place of abode, if any such can after diligent inquiry be found, and in case any such parties shall be absent from the United Kingdom, or cannot be found after diligent inquiry, shall also be left with the occupier of such lands, or, if there be no such occupier, shall be affixed upon some conspicuous part of such lands.

Defect of service not cured by A notice to treat for certain land was served on W., who was not the owner, but only the tenant of a small portion

of the land comprised in the notice. W. acted as agent for the owner in respect of the property. No notice was served upon the owner and no attempt was made by the promoters to find him. The owner subsequently served upon the promoters a counter-notice requiring them to take the whole of the premises, and this counter-notice he afterwards withdrew. It was held that the service of the original notice was bad, and that its invalidity was not cured by the service of the counter-notice (*Shepherd v. Mayor of Norwich*, 1885, 33 W. R. 841).

Section 19.
service of
counter-
notice
under
sect. 92.

In order that the notice should be valid it must operate against both parties. Hence a notice to treat with a tenant delivered to the landlord binds neither the tenant nor the company (*Reg. v. G. N. Ry. Co.*, 1876, 2 Q. B. D. 151).

Service on
wrong
person.

If the special Act directs notice to be served on the testamentary guardian of an infant, service on a next friend is bad (*Earl of Harrington v. Met. Ry. Co.*, 1865, 13 L. T. 658).

Service on Corporations Aggregate.

XX. If any such party be a corporation aggregate such notice shall be left at the principal office of business of such corporation, or, if no such office can after diligent inquiry be found, shall be served on some principal member, if any, of such corporation, and such notice shall also be left with the occupier of such lands, or, if there be no such occupier, shall be affixed upon some conspicuous part of such lands.

Section 20.
Service on
corpora-
tion at
principal
office and
on occu-
pier.

(3.) PROCEEDINGS IN CASE OF FAILURE TO TREAT.

- §. 21. Questions to be settled as hereinafter mentioned.
- §. 22. Sums of £50 and under.
- §. 23. Sums above £50 to be settled by Arbitration or a Jury.
- §. 24. Proceedings before Justices.

Proceedings in Case of Failure to Treat. Notice of Claim.

Section 21.

If parties fail to agree as to compensation for lands and for damage, the amount to be settled as hereinafter provided.

XXI. If for twenty-one days after the service of such notice any such party shall fail to state the particulars of his claim in respect of any such land, or to treat with the promoters of the undertaking in respect thereof, or if such party and the promoters of the undertaking shall not agree as to the amount of the compensation to be paid by the promoters of the undertaking for the interest in such lands belonging to such party, or which he is by this or the special Act enabled to sell, or for any damage that may be sustained by him by reason of the execution of the works, the amount of such compensation shall be settled in the manner hereinafter provided for settling cases of disputed compensation.

Upon notice to treat being given, the compensation may be settled by agreement, subject, in the case of persons under disability, to the provisions of sect. 9. If no agreement is come to the compensation is assessed, if the amount claimed does not exceed 50%, by the adjudication of two justices (ss. 22, 24), if it is above 50%, by arbitration (ss. 25—37), or by a jury (ss. 38—57).

Where a special tribunal is provided by statute, and such tribunal is non-existent, the compensation can be assessed in an action in the High Court (*Bentley v. M. S. & L. Ry. Co.*, 1891, 3 Ch. 222). As to settlement of compensation under the Housing of the Working Classes Act, 1890, see sect. 41, and Sched. II. (26).

Under this section the landowner must state the particulars of his claim; under sect. 68 he is to state the nature of his interest in the lands. But the requirement in each case is substantially the same. The description must be both of the quality and the quantity of his interest. Thus, under sect. 68, it was held to be insufficient when he described the property as "held by me on lease" (*Healey v. Thames Valley Ry. Co.*, 1864, 13 W. R. 44); and under this section the notice of claim was held to be insufficient where the claimants stated that as trustees they had "an estate and interest" in the lands (*Re N. Staff. Ry. Co. and Landor*, 1848, 6 Ry. Cas. 17). But in a case under sect. 68, where the injury was passed, and the claim was for loss of business during the construction of the railway, it was held that the notice of claim need not, after stating the claimant to be occupier of the property, go on to describe his exact legal interest. (*Cameron v. Charing Cross Ry. Co.*, 1864, 16 C. B. N. S. 430, explained in *Healey v. Thames Valley Ry. Co.*, *supra*). Claims by different persons in respect of separate interests should be made separately (*R. v. E. London Ry. Co.*, 1867, 17 L. T. 291).

Section 21.

Statement
of particulars of
claim.

Where a person claiming compensation claimed as mortgagee in possession, whereas he had in fact underlet the premises, and the company had proceeded to arbitration and the sub-leases were before the arbitrator, it was held that, though the claim was insufficient, as not correctly showing the quantity of the claimant's interest, yet the company by going to arbitration had waived the defect, and the defect did not bar the claimant's right to recover on the award (*Lovering v. City of London, &c. Subway Co.*, 1891, 7 T. L. R. 600).

Error in
claim
cured by
going to
arbitra-
tion.

A notice of claim addressed to "the Blackburn and Clitheroe Railway Company," the name of the company being "the Blackburn Railway Company," was held to be sufficient (*Eastham v. Blackburn Ry. Co.*, 1854, 9 Exch. 758).

Error in
title of
notice of
claim.

A claim by a tenant must be stated in such a way that the full amount can be paid at once; and he cannot claim a series of annual payments during the currency of his lease (*Falconer v. Aberdeen Ry. Co.*, 1853, 15 Sess. Cas. (2nd series), 352).

*Amount claimed not exceeding £50.***Section 22.**

Where claim is 50%. or under, amount to be settled by justices.

XXII. If no agreement be come to between the promoters of the undertaking and the owners of or parties by this Act enabled to sell and convey or release any lands taken or required for or injuriously affected by the execution of the undertaking, or any interest in such lands, as to the value of such lands or of any interest therein, or as to the compensation to be made in respect thereof, and if in any such case the compensation claimed shall not exceed £50, the same shall be settled by two justices.

Section applies to compensation under sect. 68.

Lands not taken, but injuriously affected, are within this section, and the compensation, if the amount claimed does not exceed 50%, is to be settled by justices; if over 50%, the procedure of sect. 68 applies (*Reg. v. St. Luke's*, 1871, L. R. 7 Q. B. 148).

Summons not limited to six months from notice to treat.

An adjudication of justices under this section is not an order for the payment of money under Jervis' Act (11 & 12 Vict. c. 43), s. 11, and the summons to hear and determine the question of compensation is not out of time if issued after six months from the notice to treat (*Reg. v. Hannay*, 1874, 44 L. J. M. C. 27). And it is the same where a claim for compensation is made under sect. 68. The summons need not be issued within six months of the claim (*Reg. v. Edwards*, 1884, 13 Q. B. D. 586, overruling *Re Edmundson*, 1851, 17 Q. B. 67).

Justices settle amount only and not title.

As in other cases of assessment under the Act, the justices simply settle the amount, leaving the question of title open (*Reg. v. Edwards, supra*). As to the procedure on a reference to justices, see sect. 24).

*Sums above £50 to be settled by Arbitration or a Jury.***Section 23.**

Claim exceeding 50%. to be settled, at option of claimant,

XXIII. If the compensation claimed or offered in any such case shall exceed £50, and if the party claiming compensation desire to have the same settled by arbitration, and signify such desire by notice in writing to the promoters of the under-

taking, before they have issued their warrant to the sheriff to summon a jury in respect of such lands, under the provisions hereinafter contained, stating in such notice the nature of the interest in respect of which such party claims compensation, and the amount of the compensation so claimed, the same shall be so settled accordingly; but unless the party claiming compensation shall as aforesaid signify his desire to have the question of such compensation settled by arbitration, or if when the matter shall have been referred to arbitration the arbitrators or their umpire shall for three months have failed to make their or his award, or if no final award shall be made, the question of such compensation shall be settled by the verdict of a jury, as hereinafter provided.

Section 23.

by arbitration :
in default
of arbitration, by
jury.

An owner does not lose his right to go under this section because he has made no claim, and the company have proceeded under sect. 85 (*Reg. v. Met. Ry. Co.*, 1865, 13 L. T. 444).

Where no
claim
made.

The following principles touching the jurisdiction of the tribunal and the measure of compensation apply equally to arbitrators and a jury.

1. Jurisdiction of tribunal assessing compensation.

The inquiry under the compensation clauses is into the amount of the compensation for the interest claimed (*Re Dare Valley Ry. Co.*, 1868, 6 Eq. 429), and not into the right to compensation (*Reg. v. L. & N. W. Ry. Co.*, 1854, 3 E. & B. 443; *Ex p. Cooper*, 1865, 13 W. R. 364; *Brandon v. Brandon*, 1864, 2 Dr. & Sm. 305; *Reg. v. Met. Ry. Co.*, 1863, 32 L. J. Q. B. 367).

Arbitrator
or jury
settle
amount of
compensation only,
and not
title.

Under this Act no question can be raised as to the title of the claimant whose land is taken or injuriously affected by a railway company until the amount of the compensation has been settled under the Act (*Re East London Ry. Co.*, 1890, 24 Q. B. D. 507, p. 511). And it is the same where the amount of the compensation is settled by a judge of the High Court and a jury, under sect. 41 of the Regulation of Railways Act, 1868 (S. C.)

Section 23.

The whole machinery of this Act is for the purpose of ascertaining the quantum of compensation, leaving to other tribunals to determine whether the party claiming has any interest, who is entitled to the compensation, and whether any damage at all has been done (per Wright, J., in *Reg. v. L. & N. W. Ry. Co.*, 1894, 2 Q. B. p. 520).

But an appeal against the amount of an award (if the amount exceeds 1,000*l.*) lies in cases under the Housing of the Working Classes Act, 1890; see Schedule II. clause 26, and *Ex p. Stevenson* (1892, 1 Q. B. 609).

A jury summoned to assess the damage for injurious affecting of lands have no jurisdiction to determine whether the lands have been injuriously affected so as to confer a title to compensation; their jurisdiction is limited to assessing the amount of compensation (*Horrocks v. Met. Ry. Co.*, 1863, 4 B. & S. 315).

An arbitrator appointed to assess compensation has no jurisdiction to adjudicate upon any collateral matter affecting the claim to compensation, but only to determine the amount (*Re Byles*, 1855, 11 Ex. 464).

Where, under a special Act, judgment given by commissioners for the amount of compensation assessed by a jury was to be "binding and conclusive to all intents and purposes," it was held that the judgment was conclusive as to the amount, but not as to the claimant's right to compensation (*Barber v. Nottingham Canal Co.*, 1864, 15 C. B. N. S. 726).

Since the verdict is conclusive as to the amount, the company, in an action for the compensation assessed by a jury, cannot plead that the plaintiff was not entitled to compensation exceeding 50*l.*, so that the amount should have been assessed by justices under sect. 22 (*Read v. Victoria, &c. Ry. Co.*, 1 H. & C. p. 840).

Question
of title is
raised in
action on
award.

The fact that the company deny their liability to pay compensation does not prevent the arbitrator from assessing the amount. The award does not preclude inquiry into the right, and the proper time for the company to raise this question is by defence to an action on the award (*Brierley Hill L. B. v. Pearsall*, 1884, 9 App. Cas. p. 601).

It follows that the reference does not preclude the company from themselves setting up title to the subject-matter of the compensation (*Campbell v. Mayor of Liverpool*, 1870, 9 Eq. 579).

And as to amount of compensation being settled before question of title, see also cases under sect. 68, *infra*, p. 181.

But where the company, without complying with the provisions of this Act, enter upon land of which A. is in lawful occupation, he can maintain an action, and at the trial the Court has jurisdiction to make a declaration of his interest in the property (*Birmingham Land Co. v. L. & N. W. Ry. Co.*, 1888, 40 C. D. 268).

Section 23.
Court may declare claimant's interest in the property.

Where land is being taken out and out, the Court will decide the question of a lessee's right of renewal at the end of his term, notwithstanding that this amounts to a declaration of a future right (*Bogg v. Mid. Ry. Co.*, 1867, 4 Eq. 310).

The High Court has no power to grant an injunction to restrain a party from proceeding with an arbitration on the ground that the matter is outside the agreement to refer. It is no legal injury for the party to go on with an arbitration which will be futile (*N. London Ry. Co. v. G. N. Ry. Co.*, 1883, 11 Q. B. D. 30; *Wood v. Lillies*, 1892, 61 L. J. Ch. 158; see *Mouchet v. G. W. Ry. Co.*, 1838, 1 Ry. Cas. 567.)

Arbitration not restrained on ground of futility.

Hence the Court will not interfere by injunction to prevent a claimant from proceeding in an arbitration, on the ground that he has no title. If he has no title he will not be able to obtain the amount of the award in an action (*London & Blackwall Ry. Co. v. Cross*, 1886, 31 C. D. p. 367).

Though the Court would grant an injunction in a case in which injustice or injury would result to the party complaining if the arbitration proceeded (*Farrar v. Cooper*, 1890, 44 C. D. p. 328).

Contra, if arbitration injurious.

The Court has power to give leave to revoke the submission where it appears that the arbitrator is going wrong on a point of law, even in a matter within his jurisdiction; and this power will be exercised when the parties agree to the arbitrator raising the question in a special case (*E. & W. India Dock Co. v. Kirk*, 1887, 12 App. Cas. 738). And the question of the admissibility of evidence can be determined by an application to revoke the submission (see *Re Lord Gerard & L. & N. W. Ry. Co.*, 1894, 2 Q. B. 915; 1895, 1. Q. B. 459).

Revocation of submission.

2. Measure of compensation.

When lands are taken compulsorily, compensation is payable for the value of the lands and also for damage caused by severance or otherwise to other lands of the same owner which are not taken (ss. 49, 63). Compensation—

Matters for which compensation is given.

Section 23. tion is also given for loss incidental to the taking of premises—such as loss of goodwill or trade profits and expenses of removal—and ten per cent. is usually added to the value of the land for compulsory purchase (see Cripps on Compensation, 4th ed. pp. 101 *et seq.*). By the Housing of the Working Classes Act, 1890, sect. 21, this addition is excluded in the case of unhealthy areas taken for an improvement scheme, and the principles of compensation are specifically stated.

Measure of compensation the same in all tribunals. Compensation under sect. 49 and under sect. 63 are substantially the same. The words used in the two sections are slightly different, but there can be no doubt at all that the legislature intended that the same measure of compensation should exist in the case of compensation awarded by arbitrators, justices, or surveyors, and the case of compensation assessed by a jury (*Holt v. Gas Light & Coke Co.*, 1872, L. R. 7 Q. B. p. 736).

Arrears of rent. Arrears of rent are no part of the value of the reversion, and allowance cannot be made for arrears existing when the land is taken, notwithstanding that by the taking they become irrecoverable. But the landlord may possibly have a charge for them on any compensation paid for the tenant's interest (*Re Kilcorth Rifle Range*, 1899, 2 Ir. 305; *infra*, p. 320).

Rental basis of valuation In 1839 land was let to a railway company for a term of twenty-one years at a rent of 144*l.* 5*s.* After the expiration of the term the land continued to be occupied by the company, who had placed valuable works upon it, and the rent was regularly paid. For other purposes than the railway the land would not have fetched so high a rent. Upon notice to treat being given by the company, it was held that the yearly rent of 144*l.* 5*s.* was properly taken as a basis upon which to calculate the value of the land (*Earl of Eldon v. N. E. Ry. Co.*, 1899, 80 L. T. 723).

Re-in-statement. Under the terms of the special Act, the compensation may be assessed not on the value of the land taken, but on the cost of acquiring an equally convenient site elsewhere (*London School Board v. S. E. Ry. Co.*, 1887, 3 T. L. R. 710). In other words, the assessment is made on the principle of re-instatement (see Cripps on Compensation, 4th ed. 109).

Valuation as at date of notice. The date of the notice to treat fixes the time with respect to which the premises are to be valued, and the claimant is debarred from altering his position after that date (*supra*, p. 104); but if the company do not proceed

under the notice and if they go into possession without paying the price, upon the owner subsequently recovering judgment in ejectment, they may have to pay the value of the land at the date of the action (*Stretton v. G. W. &c. Ry. Co.*, 1870, 5 Ch. 751). Section 23.

But as well in estimating the value of land taken as in estimating compensation for injury by severance of land left, account may be taken of any prospective increase in the value of the land due to uses to which, but for the works of the company, the owner might expect to put it. The jury, both as to the value of land taken and as to damages for severance, have to consider the real value of the land, and may take into account not only the present purpose to which the land is applied, but also any other more beneficial purpose to which in the course of events at no remote period it may be applied. So in respect of severance: the jury have to consider how far the prospective value will be depreciated by the severance. The jury may, therefore, assess compensation upon the basis of the prospective value of agricultural land as building land (*Reg. v. Brown*, 1867, L. R. 2 Q. B. 630); or its prospective value for use as a reservoir, &c. (*Ripley v. G. N. Ry. Co.*, 1875, 10 Ch. 435; *Riddell v. Newcastle Water Co.*; *Manchester Corp. v. Countess Ossalinski*, reported in *Browne and Allan on Compensation*, p. 718; *Bailey v. Thanet Light Rys.*, 1900, 1 Q. B. 722). Prospective increase of value.

Where the lands taken are those of a public body, the compensation must take into account any statutory benefits to which, had the land not been taken compulsorily, the public body would have been entitled. Hence where the Conservators of the River Thames were empowered to grant licences for the use of foreshore, and to charge such rent as should be deemed to be the true and fair worth to the licensee, and the foreshore was taken by a railway company, it was held that the compensation was to be based not on the existing value to the conservators, but upon the basis of the rent which would have been allowed had the land been obtained by licence (*Conservators of River Thames v. London, Tilbury & Southend Ry. Co.*, 1892, 68 L. T. 21).

Where land is subject, as in the case of a burial ground, to a permanent restriction as to its use, its value is to be estimated on the footing of such restricted user, and not on the footing of its value when used for the purposes of the Deduction for restriction on user.

Section 23. undertaking (*Stebbing v. Metrop. Board of Works*, 1870, L. R. 6 Q. B. 37). But it is otherwise where there exists an option of putting an end to the restricted user, and the full commercial value is then allowed (*Re Morgan & L. & N. W. Ry. Co.*, 1896, 2 Q. B. 469).

Tithes. As to compensation for tithes, see *Esdaile v. Met. & Dist. Rys.*, 1881, 46 J. P. 103; *London & Blackwall Ry. Co. v. Letts*, 1851, 3 H. L. C. 470; *R. v. Nene Outfall Commissioners*, 1829, 9 B. & C. 875

Stream. In estimating the value of a stream, it is necessary to take into account the use to which it can be put relatively to the land. Apart from the right of fishing, &c., it is only so far as the water can be made available for increasing the use or enjoyment of the land that it can be said to have any value, and the compensation to be paid for its loss must, therefore, practically speaking, be measured by the deterioration of the value of the land occasioned by such loss (*Stone v. Corp. of Yeovil*, 1876, 2 C. P. D. 99).

Part of stream abstracted and re-turned. If part of the water of a stream is abstracted, but the bulk of it sent back, the riparian owner is not entitled to compensation for the whole quantity originally abstracted. The compensation must be based upon the probability as to what the future actual damage will be (*Page v. Kettering Waterworks Co.*, 1892, 8 T. L. R. 228).

Loss of trade profits. Compensation is given for loss of trade profits and for goodwill (see *Ex p. Bergin*, 1884, 13 L. R. Ir. 245); and also for removal, even though the business was being carried on at a loss (*R. v. Burrow*, 1884, Times, Jan. 24).

Goodwill.

Where the premises themselves are taken, the profits of a business carried on upon them have, it has been said, been always admittedly estimated as enhancing the value of the premises to the owner, and compensation has been awarded having regard to such increase of value (*Lord Mayor of Dublin v. Dowling*, 1880, 6 L. R. Ir. 502; per May, C. J., at p. 509). But this allowance does not extend to depreciation in the value of a public-house in consequence of its custom having been diminished by the pulling down of neighbouring houses taken by the company (*Reg. v. Vaughan*, 1868, L. R. 4 Q. B. 190; see *R. v. London Dock Co.*, 1836, 5 A. & E. 163).

Where an old-established business carried on at No. 11, Parliament Street, was about to be transferred to No. 10, but before the transfer had been effected, notice to treat for No. 10 was given to the proprietor of the business, it

was held that the compensation properly included a sum for the goodwill which would probably have attached to No. 10 (*White v. Comm. of Works*, 1870, 22 L. T. 591). Section 23.

A jury may take into consideration the loss of business profits, notwithstanding that the claimant has moved into other premises in the same street (*Reg. v. Scard*, 1894, 10 T. L. R. 545).

Under the words of a special Act, compensation was allowed to a claimant for the loss sustained in giving up his business as a brewer until he could obtain other suitable premises (*Jubb v. Hull Dock Co.*, 1846, 9 Q. B. 443). Loss sustained by removal.

A claim for compensation in respect of removal to new premises can be sustained, although the claimant has, under an option in his lease, terminated his lease of the old premises (*Reg. v. Poulter*, 1887, 56 L. J. Q. B. 581).

A company entered upon a piece of land at Wandsworth belonging to a seedsman whose offices were in Covent Garden, where he kept his stock. In the land at Wandsworth he sowed small quantities of all the seeds in his stock on trial, after which he sold each parcel at a higher price by reason of his giving a warranty based on his experience. He was in consequence of the taking of the land unable to warrant his seeds, which were in consequence depreciated in value 50 per cent. The damage was held to be too remote, and therefore not recoverable (*Re Clarke and Wandsworth B. W.*, 1868, 17 L. T. 549). Damage must not be too remote.

Where the premises to be taken are licensed premises let upon lease, the arbitrators, in estimating the compensation to be paid to the reversioner, ought to admit evidence of the present market value of his reversionary interest in the premises *as licensed premises*, and should not confine the evidence to the estimated rental value of the premises upon the assumption that when the reversion fell in they would not then be licensed premises (*Belton v. L.C.C.*, 1893, 41 W. R. 315). Licensed premises.

Where the owner in fee of a public-house is a brewer, and the house is held upon a lease under which the tenant is bound to take beer from the owner, the additional value consequent on this obligation must be taken into consideration in fixing the compensation to be paid to the owner (*Bourne v. Mayor of Liverpool*, 1863, 33 L. J. Q. B. 15; see *Re London C.C. and City of London Brewery Co.*, 1898, 1 Q. B. 387). Tied house.

Section 23.Stamp
duty.

The whole amount awarded, although including compensation for loss of business, is to be taken as the consideration on sale for the purpose of stamp duty (*Comm. of Inland Revenue v. Glasgow & S. W. Ry. Co.*, 1887, 12 App. Cas. 315).

Abandon-
ment of
under-
taking.

The special Act usually contains a clause enacting that, in case of the abandonment of the railway, the parliamentary deposit shall be applicable towards compensating any landowners or other persons whose property may have been interfered with or otherwise rendered less valuable by the commencement, construction, or abandonment of the railway or any portion thereof, or who may have been subjected to injury or loss in consequence of the company's compulsory powers of taking property—i.e., in consequence of the exercise of the compulsory powers (*Re Uxbridge, &c. Ry. Co.*, 1890, 43 C. D. 536)—for which injury or loss no compensation or inadequate compensation shall have been paid (see *Ex p. Bradford, &c. Tramways Co.*, 1893, 3 Ch. 463). In applying such a clause the measure of injury is to be determined by comparing the value of the estate immediately before with its value immediately after the abandonment (*Re Potteries, &c. Ry. Co.*, 1883, 25 C. D. 251). A landowner can, as a general rule, only claim compensation on account of acts done or omitted to be done by the company under their statutory powers, and not on account of any collateral obligation entered into by the company, unless the breach of the obligation is necessarily involved in the abandonment of the railway and indistinguishable from it (*Re Ruthin, &c. Ry. Act*, 1886, 32 C. D. 438).

Award
must be
pecuniary,
and not
include
accommo-
dation
works.

The award or verdict must be for a sum of money only, and such sum must not include any allowance for accommodation works which the company are under statutory obligation to construct:—

The verdict will be bad if the jury order works to be done—e.g., a fence to be erected—in addition to a money compensation, instead of giving the whole compensation in money (*Reg. v. South Holland Drainage Committee*, 1838, 8 A. & E. 429; as to a provision in a special Act for referring all disputes respecting compensation or things done under the Act, see *Blagrove v. Bristol W. W. Co.*, 1856, 1 H. & N. 369).

The jury cannot award compensation for communications made by the landowner between severed portions where the company would be obliged, under sect. 69 of the R. C. A.,

1845, to make them (*S. Wales Ry. Co. v. Richards*, 1849, 6 Ry. Cas. 197). And similarly as to an award (*Re Ware & Regent's Canal Co.*, 1854, 9 Ex. 395; *Skerratt v. N. Staff. Ry. Co.*, 1848, 5 Ry. Cas. 166). Section 23.

The award must give compensation in respect of the specific interest claimed, and must not lump various interests together. Hence where a claim is made by a person in respect of an agreement for a renewal of his lease of the lands, and the umpire awards to the owners of the freehold one sum for the purchase "of the fee simple in possession free from all incumbrances," the award is not good (*Re N. Staff. Ry. Co. and Landor*, 1848, 6 Ry. Cas. 17). But where a sum was awarded for a fee simple in possession, that being what the landowner's notice claimed, though there were leases, the award was held to be good, and the company was left to deal with the tenants (*Re Bradshaw's Arbitration*, 1848, 12 Q. B. 562; *cf. Ex p. Luntley*, 1865, 13 L. T. 490). A landlord has no claim to share in compensation awarded to a tenant (*Peddie v. Brown*, 1857, 3 Macq. 65). Award must deal separately with each interest claimed.

Where the assessment was delayed, and the jury in 1864 assessed the value of certain stone as in 1852, saying nothing about interest, it was doubted whether they could have given interest, even had the delay been attributable to the company, and it was held that the Court had no jurisdiction to do so (*Caledonian Ry. Co. v. Carmichael*, 1870, L. R. 2 H. L. Sc. 56; *cf. Hilhouse v. Davies*, 1813, 1 M. & S. 169). Interest when assessment delayed.

The company do not pay interest from the date of the award, but from such time as they might prudently take possession, that is, from the time when a good title is shown (*Re Pigott & G. W. Ry. Co.*, 1881, 18 C. D. 146, disapproving *Re Eccleshill Local Board*, 1879, 13 C. D. 365. See *Spencer-Bell to L. & S. W. Ry. Co.*, 1885, 33 W. R. 771; *Catling v. G. N. Ry. Co.*, 1869, 18 W. R. 121; *Re Lindsey*, 1883, 11 L. R. Ir. 392); though, if possession is taken earlier, interest at 4 per cent. becomes payable (*Rhys v. Dare Valley Ry. Co.*, 1874, 19 Eq. 93; *vid. sup.* pp. 68, 69). Interest on award.

Where the compensation is determined by a jury, the execution of a conveyance does not estop the owner from afterwards claiming interest on the amount awarded from the time when the company enters upon the lands down to the date of payment of the amount awarded (*Baltimore Extension Ry. Co., Ex p. Daly*, 1895, 1 Ir. R. 169, on the Railways (Ireland) Acts).

Section 23. It seems that the award will cover any claim for mesne profits (*Smalley v. Blackburn Ry. Co.*, 1857, 2 H. & N. 158), and a lessee remains liable for rent until possession taken or compensation paid into Court (*Callow v. Flynn*, 1890, 26 L. R. Ir. 179).

Mesne
profits
and rent.

Proceedings before Justices.

Section 24. XXIV. It shall be lawful for any justice, upon the application of either party with respect to any question of disputed compensation by this or the special Act, or any Act incorporated therewith, authorized to be settled by two justices, to summon the other party to appear before two justices, at a time and place to be named in the summons, and upon the appearance of such parties, or, in the absence of any of them, upon proof of due service of the summons, it shall be lawful for such justices to hear and determine such question, and for that purpose to examine such parties or any of them, and their witnesses, upon oath, and the costs of every such inquiry shall be in the discretion of such justices, and they shall settle the amount thereof.

Power to
issue
summons.

Evidence.

Costs.

Certiorari.

As to *certiorari* to quash or remove the proceedings, see sect. 145 and notes.

(4.) ARBITRATION.

- § 25. Appointment of Arbitrators.
- § 26. Supplying Vacancies.
- § 27. Appointment of Umpire.
- § 28. Proceedings in Default of Appointment of Umpire.
- § 29. Case of Death of Single Arbitrator.
- § 30. Refusal of One of the Arbitrators to act.
- § 31. Failure to make Award within Twenty-one Days.
- § 32. Power to call for Documents and examine on Oath.
- § 33. Declaration of Arbitrator or Umpire.
- § 34. Costs.
- § 35. Delivery and Custody of Award.
- § 36. Submission a Rule of Court.
- § 37. Award not to be set aside through Error in Form.

The landowner has the choice whether there shall be an arbitration or not. But before requiring arbitration he must state the amount of compensation he claims, in order that the promoters may have an opportunity of considering whether they will pay him the amount he claims without arbitration, or whether they will offer him a smaller sum (*Fitzhardinge v. Gloucester Canal Co.*, 1872, L. R. 7 Q. B. 776 ; see per Blackburn, J., p. 781).

Choice of arbitration is with landowner.

Where the parties agree to an arbitration under the Act, a perfect compliance with the statutory procedure is not necessary. This is only required in compulsory arbitrations (*Collins v. S. Staff. Ry. Co.*, 1852, 21 L. J. Ex. 247). And notwithstanding variation in procedure the landowner will be entitled to the benefit of sect. 34 in respect of costs (*Martin v. Leicester W. W. Co.*, 1858, 3 H. & N. 463).

Statutory procedure may be varied.

A submission under the Act may, by consent, be made to embrace incidents and to import powers not included in a reference proceeding simply on the statutory clauses. Such a reference may be based on the statute and on the common law, and may derive efficacy from both (*Caledonian Ry. Co. v. Lockhart*, 1860, 3 Macq. 808).

Submission may go beyond statutory reference.

By virtue of sect. 23 the time for making the award is limited to three months from the appointment of the arbitrators, and the limit applies to arbitrations under sect. 68 (*Erans v. L. & Y. Ry. Co.*, 1853, 1 E. & B. 754) ; but the time may be extended by consent (*Re Palmer &*

Time for making award.

Met. Ry. Co., 1862, 10 W. R. 714; *Caledonian Ry. Co. v. Lockhart*, 1860, 3 Macq. 808; or by the Court (*Re Dare Valley Ry. Co.*, 1869, 4 Ch. 554; Arbitration Act, 1889, sects. 9, 10; see *Knocles v. Bolton Corporation*, 1900, 2 Q. B. 253). The umpire has a new period of three months from the time when the arbitration devolves upon him (*Skerratt v. N. Staff. Ry. Co.*, 1848, 2 Phil. 475); or, if he is not appointed until after the awarding power of the arbitrators has come to an end, from the date of his appointment (*Re Pullen & Corp. of Liverpool*, 1882, 51 L. J. Q. B. 285; *Re Bradshaw's Arbitration*, 1848, 12 Q. B. 562). The limit does not apply to the settlement of costs (*Gould v. Staff. Potteries W. W. Co.*, 1850, 6 Ry. Cas. 568).

Arbitra-
tors can
state
special
case.

An arbitration under this Act was, after considerable difference of opinion (see *Re Harper and G. E. Ry. Co.*, 1875, 20 Eq. 39), held to be an arbitration by consent, and hence the arbitrators could state an award in the form of a special case under the C. L. P. Act, 1854 (*Rhodes v. Airedale Drainage Commissioners*, 1876, 1 C. P. D. 402); and they can do so now under the Arbitration Act, 1889, s. 7. And since the decision of the Court is an "order" within the meaning of sect. 19 of the Judicature Act, 1873, it is subject to appeal (*Bidder v. N. Staff. Ry. Co.*, 1878, 4 Q. B. D. 412; Judic. Act, 1894, s. 1 (1) (b) (v)). But there is no appeal where a special case is stated for the opinion of the Court in the course of the arbitration under sect. 19 of the Arb. Act, 1889 (*Re Knight & Tabernacle Building Society*, 1892, 2 Q. B. 613).

As to the effect of the Arbitration Act, 1889, on arbitrations under this Act, *vid. infra*, p. 135.

Appointment of Arbitrators.

Section 25.

Unless
parties
concur in
appoint-
ment of
single
arbitrator,
each to
appoint
his own
arbitrator.

XXV. When any question of disputed compensation by this or the special Act, or any Act incorporated therewith, authorized or required to be settled by arbitration shall have arisen, then, unless both parties shall concur in the appointment of a single arbitrator, each party, on the request of the other party, shall nominate and appoint an arbitrator, to whom such dispute shall be referred; and every appointment of an arbitrator shall be made on the part of the promoters of the undertaking under the hands of the said

promoters or any two of them, or of their secretary or clerk, and on the part of any other party under the hand of such party, or if such party be a corporation aggregate under the common seal of such corporation; and such appointment shall be delivered to the arbitrator, and shall be deemed a submission to arbitration on the part of the party by whom the same shall be made; and after any such appointment shall have been made neither party shall have power to revoke the same without the consent of the other, nor shall the death of either party operate as a revocation; and if for the space of fourteen days after any such dispute shall have arisen, and after a request in writing, in which shall be stated the matter so required to be referred to arbitration, shall have been served by the one party on the other party to appoint an arbitrator, such last-mentioned party fail to appoint such arbitrator, then upon such failure the party making the request, and having himself appointed an arbitrator, may appoint such arbitrator to act on behalf of both parties, and such arbitrator may proceed to hear and determine the matters which shall be in dispute, and in such case the award or determination of such single arbitrator shall be final.

Section 25.

Appointment not revocable.

In default of appointment by either party, the arbitrator of the other party to act alone.

The proper steps under this section are, first that an endeavour should be made by the parties to concur in choosing a single arbitrator. In the event of this failing, a request should be made by the one upon the other that the latter should nominate an arbitrator. Then each should make appointments in writing, and deliver them to their respective arbitrators. That is to be deemed the submission, and is irrevocable (*Yates v. Mayor, &c. of Blackburn*, 1860, 6 H. & N. 61, pp. 70, 71; *cf. Bradley v. L. & N. W. Ry. Co.*, 1850, 1 Prac. Cas. 597). But an award is not bad because there has been no attempt to appoint a single arbitrator (*Eagle v. Charing Cross Ry. Co.*, 1867, 36 L. J. C. P. 297).

Procedure.

Section 25. An appointment of an arbitrator is not complete without notice to the other party (*Tew v. Harris*, 1847, 11 Q. B. 7).

**Nomina-
tion not an
admission
of title.** A company does not, by nominating an arbitrator under protest, admit that the claimant is entitled to compensation (*Sutton Harbour Improvement Comm. v. Hitchens*, 1851, 1 D. M. & G. 161).

**Interested
person
should not
be arbi-
trator.** The surveyor of a railway company had in that character treated with a landowner, and offered a price for land required by the company. He was subsequently named by the company, and acted as their arbitrator upon an arbitration under this Act. It was held that he ought not to have been selected as an arbitrator (*Re Elliott & S. Devon Ry. Co.*, 1848, 2 De G. & Sm. 17).

It is a proper objection to the appointment of an arbitrator that he has given evidence for the company with respect to the value of other property in the neighbourhood (*Re Clout & Met. & Dist. Ry. Cos.*, 1882, 46 L. T. 141; but see *Re Haigh & L. & N. W. Ry., &c. Cos.*, 1896, 1 Q. B. 649).

**But objec-
tion
waived by
proceed-
ing in
arbitra-
tion.** A party who objects to the appointment of an arbitrator as being improper will be held to waive the objection if he proceeds with the arbitration, and upon this ground the objection was held to be waived in the two last-mentioned cases.

Where the parties are aware of a defect in the constitution of the tribunal, any objection based on the defect should be taken promptly (*Emmanuel Hospital v. Metrop. Dist. Ry. Co.*, 1869, 19 L. T. 692).

Supplying Vacancies.

Section 26. XXVI. If, before the matters so referred shall be determined any arbitrator appointed by either party die, or become incapable, the party by whom such arbitrator was appointed may nominate and appoint in writing some other person to act in his place, and if for the space of seven days after notice in writing from the other party for that purpose he fail to do so, the remaining or other arbitrator may proceed *ex parte*; and every arbitrator so to be substituted as aforesaid shall have the same powers and authorities as

**Vacancy
may be
filled up
by party
con-
cerned: in
default,
other arbi-
trator pro-
ceeds *ex
parte*.**

were vested in the former arbitrator at the time of such his death or disability as aforesaid. Section 26.

Appointment of Umpire.

XXVII. Where more than one arbitrator shall have been appointed such arbitrators shall, before they enter upon the matters referred to them, nominate and appoint by writing under their hands an umpire to decide on any such matters on which they shall differ, or which shall be referred to him under the provisions of this or the special Act; and if such umpire shall die, or become incapable to act, they shall forthwith after such death or incapacity appoint another umpire in his place; and the decision of every such umpire on the matters so referred to him shall be final. Section 27.
Umpire to be appointed by arbitrators before entering on reference.

The power of appointing an umpire under sects. 27 and 28 is not restricted to the 21 days from the time when the appointment of arbitrators is complete, mentioned in sect. 31. It may be exercised within three months from that time (*Bradshaw's Arbitration*, 1848, 12 Q. B. 562; *Holdsworth v. Barsham*, 1862, 31 L. J. Q. B. 145; *S. C.* on appeal, *sub nom. Holdsworth v. Wilson*, 32 *ibid.* 289). Time for appointing umpire.

A surveyor to and shareholder in a railway company which was closely connected in interest with, and held many shares in, the company concerned in the arbitration, was appointed umpire by the arbitrators, and as umpire made his award. It was held that, whatever objections there might be in point of delicacy to the appointment of such an umpire, they did not constitute sufficient grounds for setting aside the award (*Re Elliott and S. Devon Ry. Co.*, 1848, 2 De G. & Sm. 17). Objection on ground of interest.

For appointment of umpire by Board of Trade on failure of arbitrators to appoint, see sect. 28; or where one arbitrator refuses to appoint, the other may proceed *ex parte* to make an award under sect. 30. Appointment by Board of Trade.

Upon the death of the umpire before making his award, it seems that either a new umpire may be appointed by the arbitrators, or, failing this, by the Board of Trade on Death of umpire.

Section 27. the application of the landowner ; or the appointment may be made on application to the Court or a judge under sect. 5 of the Arbitration Act, 1889 (*Reg. v. Manley-Smith*, 1893, 63 L. J. Q. B. p. 172).

If, under such circumstances, the parties agree upon a sole arbitrator, this is a continuation of the statutory submission, and if the compensation awarded exceeds the amount offered by the company, the landowner is entitled, under sect. 34, to the taxed costs from the beginning of the arbitration. Under such circumstances, sect. 23 does not require the summoning of a jury (*S. C. ibid.* 171).

Proceedings in Default of Appointment of Umpire.

Section 28.

In default,
Board of
Trade
appoint
umpire.

XXVIII. If in either of the cases aforesaid the said arbitrators shall refuse, or shall for seven days after request of either party to such arbitration neglect to appoint an umpire, the Board of Trade, *in any case in which a railway company shall be one party to the arbitration, and two justices in any other case*, shall, on the application of either party to such arbitration, appoint an umpire ; and the decision of such umpire on the matters on which the arbitrators shall differ, or which shall be referred to him under this or the special Act, shall be final.

L. C.
(Umpire)
Act, 1883.

The words in italics were repealed by the Lands Clauses (Umpire) Act, 1883 (46 Vict. c. 15). The section is not affected by sect. 6 of the Board of Trade Arbitration, &c. Act, 1874 (37 & 38 Vict. c. 40), under which matters may in general be referred to the Railway Commissioners.

Irregular
appoint-
ment.

An umpire was appointed by a document not under seal, and signed by a person not describing himself as Secretary of the Board of Trade. The Court, however, considered the objection too doubtful, and refused to set aside the award on motion (*Wilts, &c. Ry. Co. v. Fooks*, 1849, 3 Exch. 728).

Failure to
appoint.

Where the proceedings have become abortive in consequence of the non-appointment of an umpire within the time limited, the landowner may, by *mandamus*, compel the company to summon a jury (*Ex p. Senior*, 1849, 7 D. & L. 36 ; see *infra*, p. 138).

Case of Death of Single Arbitrator.

XXIX. If when a single arbitrator shall have been appointed such arbitrator shall die or become incapable to act before he shall have made his award, the matters referred to him shall be determined by arbitration, under the provisions of this or the special Act, in the same manner as if such arbitrator had not been appointed.

Section 29.

On death of single arbitrator, fresh arbitration begins.

Refusal of one of the Arbitrators to act.

XXX. If where more than one arbitrator shall have been appointed either of the arbitrators refuse or for seven days neglect to act, the other arbitrator may proceed *ex parte*, and the decision of such other arbitrator shall be as effectual as if he had been the single arbitrator appointed by both parties.

Section 30.

On neglect of one arbitrator, other proceeds *ex parte*.

The failure of an arbitrator to attend is not necessarily a refusal within this section (*Re Hawley & N. Staff. Ry. Co.*, 1848, 2 De G. & Sm. pp. 44, 45).

Failure to attend proceedings.

Where one of the parties to a reference to an umpire desires a postponement of a meeting of which he has received due notice, he should attend and state his reasons; if he simply abstains from attending, the umpire can proceed *ex parte*, and the party in default will only be heard afterwards as a matter of indulgence and on terms of paying costs (*Re Hewitt & Portsmouth W. W. Co.*, 1862, 10 W. R. 780).

Delay in making the award, though due to a mistake as to the arbitrator's duty, may amount to neglect to act (*Willoughby v. Willoughby*, 1847, 9 Q. B. 923).

Delay in making award.

Where arbitrators have been appointed under sect. 25, and one arbitrator refuses or neglects for seven days to concur in the appointment of an umpire, the other arbitrator can proceed *ex parte* under sect. 30 to make an award without the previous appointment of an umpire (*Shepherd v. Corporation of Norwich*, 1885, 30 C. D. 553).

Appointment of umpire not necessary.

*Failure to make Award within Twenty-one Days.***Section 31.**

If award
not made
within
twenty-
one days,
or within
extended
time,
reference
devolves
on umpire.

XXXI. If where more than one arbitrator shall have been appointed, and where neither of them shall refuse or neglect to act as aforesaid, such arbitrators shall fail to make their award within twenty-one days after the day on which the last of such arbitrators shall have been appointed, or within such extended time (if any) as shall have been appointed for that purpose by both such arbitrators under their hands, the matters referred to them shall be determined by the umpire to be appointed as aforesaid.

The arbitrators may appoint an umpire notwithstanding the twenty-one days mentioned in this section have elapsed (see *supra*, p. 125).

*Power to call for Documents and examine on Oath.***Section 32.**

Arbitra-
tors may
call for
docu-
ments, &c.

XXXII. The said arbitrators or their umpire may call for the production of any documents in the possession or power of either party, which they or he may think necessary for determining the question in dispute, and may examine the parties or their witnesses on oath, and administer the oaths necessary for that purpose.

Evidence
on oath.

It is not absolutely necessary to take the evidence upon oath, but it is the ordinary practice, and if taken otherwise both parties must waive its being taken upon oath (*Wakefield v. Llanelly Ry. & Dock Co.*, 1864, 34 Beav. 245, per Romilly, M. R., p. 249). But this statement seems to go too far, and apparently it is left to the discretion of the arbitrator whether he shall examine on oath or no (see per Lord Wensleydale in *Caledonian Ry. Co. v. Lockhart*, 1860, 3 Macq. p. 823). He may call in experts to assist him (*ibid.*).

Evidence
not essen-
tial.

It seems that where the arbitrators are experts, and are acquainted with the property, it is not essential for them to hear evidence (*Bottomley v. Ambler*, 1877, 38 L. T. 545).

Declaration of Arbitrator or Umpire.

XXXIII. Before any arbitrator or umpire shall enter into the consideration of any matters referred to him, he shall in the presence of a justice make and subscribe the following declaration; that is to say,—

Section 33.

Declara-
tion to be
made by
arbitrator
or umpire
before
justice.

“I, A. B., do solemnly and sincerely declare, that I will faithfully and honestly, and to the best of my skill and ability, hear and determine the matters referred to me under the provisions of the Act [*naming the special Act*].

“A. B.

“Made and subscribed in the presence of .”
And such declaration shall be annexed to the award when made; and if any arbitrator or umpire having made such declaration shall wilfully act contrary thereto he shall be guilty of a misdemeanour.

It appears that the Court has jurisdiction to restrain an arbitrator by injunction from proceeding with a reference on the ground of corruption (*Malmesbury Ry. Co. v. Budd*, 1876, 2 C. D. 113).

Corrup-
tion in
arbitrator.

The interpretation given by sect. 3 to the word “justices” does not apply to the word in this section. Hence the declaration may be made before any justice of the peace, and not only before a justice for the county in which the lands are situated (*Davies v. S. Staff. Ry. Co.*, 1851, 2 Prac. Cas. 599).

Declara-
tion.

Delay in making the declaration is no objection, provided it is in fact made before entering upon the matters referred (*Bradshaw's Arbitration*, 1848, 12 Q. B. 562).

If the reference comprises other matters than compensation it is not a reference under this Act, and the declaration need not be made (*Lerick v. The Epsom and Leatherhead Ry. Co.*, 1859, 1 L. T. 60).

In a case under the Act a party who proceeds with the arbitration knowing that the declaration has not been made cannot object on this ground (*Ibid.*).

Waiver of
objection
to omission
of declara-
tion.

*Costs of the Arbitration.***Section 34.**

Promoters
pay costs
of arbitra-
tion unless
award is
same or
less than
offer.

XXXIV. All the costs of any such arbitration, and incident thereto, to be settled by the arbitrators, shall be borne by the promoters of the undertaking, unless the arbitrators shall award the same or a less sum than shall have been offered by the promoters of the undertaking, in which case each party shall bear his own costs incident to the arbitration, and the costs of the arbitrators shall be borne by the parties in equal proportions.

Owner
absent.

The costs of an arbitration where an absent owner on his return is dissatisfied with the valuation are regulated by sect. 67.

Section
does not
apply to
references
outside
Act.

Section 34 does not apply to a reference under an agreement made with the promoters before the passing of the Act authorizing the lands to be taken (*Catling v. G. N. Ry. Co.*, 1869, 18 W. R. 121); or to references outside the Act (1847, *Ex p. Reynal*, 5 Ry. Cas. 60). But it applies to a reference under the Act, notwithstanding that the statutory procedure is in part varied (*Martin v. Leicester W. W. Co.*, 1858, 3 H. & N. 463).

Not ex-
cluded by
special Act
varying
procedure.

Where the special Act varies in a particular point the procedure in arbitration under this Act—as where it provides that the arbitration shall be conducted by an arbitrator appointed by the Board of Trade—the provision of sect. 34 is not repealed (*Metrop. Dist. Ry. Co. v. Sharpe*, 1880, 5 App. Cas. 425).

Applies
where land
taken
under
Public
Health
Act, 1875.

When land has been taken compulsorily by a local board under the powers of this Act incorporated in the Public Health Act, 1875, and an arbitration takes place to determine the amount of compensation to be paid to the owner of the land so taken, the procedure with regard to such arbitration, and the right to costs, are wholly governed by the provisions of this Act, and not by those of the Public Health Act with regard to arbitrations under that Act (*Ex p. Rayner*, 1878, 3 Q. B. D. 416; *S. C. sub nom. Reg. v. Smith*, 26 W. R. 812).

Costs need
not be
settled in
award.

Costs under this section need not be settled in the award, but may be dealt with subsequently by the persons making the award. And the adjudication of costs need not be within three months from the time of the reference (*Gould*

v. *Staffordshire Potteries Waterworks Co.*, 1850, 5 Ex. 214; **Section 34.** overruling *Re L. & N. W. Ry. Co. & Quick*, 1849, 5 Ry. Cas. 520; see *Wilts, &c. Ry. Co. v. Fooks*, 1849, 3 Ex. 728). With respect to arbitrations governed by sect. 2 of the Arbitration Act, 1889, and clause (i) of the schedule, a different rule applies, and the arbitrators, if they settle the costs, must do so in the award (*Re Prebble & Robinson*, 1892, 2 Q. B. 602); otherwise they will be liable to taxation.

The arbitrators cannot include in the costs the costs of an abortive arbitration held under a wrong Act (*Re Kilworth Rifle Range*, 1899, 2 Ir. 305). **Abortive arbitration.**

The costs of a special case, and of an appeal from a decision thereon, are, by virtue of sects. 7 & 20 of the Arbitration Act, 1889, in the discretion of the Court (*Re Gonty & M. S. & L. Ry. Co.*, 1896, 2 Q. B. 439, 450). Formerly such costs were held to be regulated by sect. 34 (*Re Holliday & Mayor of Wakefield*, 1888, 20 Q. B. D. 699, p. 720; see 1891, A. C. p. 106). **Costs of special case.**

Power in a submission to arbitration over the "cost of the reference" includes power to award the costs of the award (*Re Walker & Brown*, 1882, 9 Q. B. D. 434). **Costs of award.**

An offer made by the promoters under sect. 38 is not abrogated by the claimant's notice for arbitration, and it governs the costs of the arbitration (*Lascelles v. Swansea School Board*, 1899, 69 L. J. Q. B. 24). **The offer.**

An offer of compensation must be an unconditional offer for the lands to be taken or the injury done, and it is bad if it be an offer of one sum for compensation and costs (*Re Balls & Metrop. Board of Works*, 1866, L. R. 1 Q. B. 337). **Offer by the company must not include sum for costs.**

If a sum exceeding 50*l.* is awarded the landowner is entitled to costs notwithstanding that no offer has been made by the company (*Martin v. Leicester W. W. Co.*, 1858, 3 H. & N. 463). **Effect where no offer made.**

An offer made by the company may be withdrawn, and the result is then the same as though it had never been made; and although the sum awarded is less than the offer, the company are not entitled to the benefit of this section (*Foster v. Mayor of Sheffield*, 1895, 72 L. T. 549). **Or offer withdrawn.**

The award should state whether the amount awarded is greater or less than the sum offered by the company (see *Wilts, &c. Ry. Co. v. Fooks*, 1849, 3 Ex. 728). But the arbitrators or umpire have no power in the first instance to inquire what was the amount of the tender (*Gould v. Staffs. Potteries W. W. Co.*, 1850, 6 Ry. Cas. p. 575). **Award to show incidence of costs.**

Section 34.

Incidence
of costs
where
compensa-
tion
offered in
separate
items.

If the umpire awards as to one part of a claim more than the company have offered, and as to the other part nothing, the company having offered nothing, the landowner is entitled only to the costs incident to the part of his claim in respect of which compensation was awarded (*Reg. v. Birom*, 1852, 17 Q. B. 969). But the general rule is that where a claim is sent in in different items, and different sums are offered in respect of each item, the liability for costs is to be determined by a comparison of the aggregate amount awarded with the aggregate sum offered (*Re Hayward & Met. Ry. Co.*, 1864, 4 B. & S. 787, see p. 801).

Offer and
award
must be in
respect of
same
subject-
matter.

The amount offered by the company was 11,000*l.* Upon the arbitration the company met part of the landowner's claim by agreeing to allow him a right to make a sewer under the land of the company, and no claim in respect of the interruption of drainage was ultimately submitted to the arbitrator. The arbitrator awarded 10,629*l.* It was held that though this was less than the company's offer, yet the company were liable under sect. 34 to pay the costs of the arbitration, on the ground that the award was not in respect of the same subject-matter as that in respect of which the offer was made (*Miles v. G. W. Ry. Co.*, 1896, 2 Q. B. 432).

Offer may
be varied
up to time
of arbitra-
tion.

There is no time limited for the offer under this section similar to the time limited under sect. 38, and the company, after having made an offer, are at liberty to withdraw it and substitute a further offer before the claimant has taken any step involving costs in the arbitration. The final offer which is to bind the company and the claimant's right to costs must be made before the arbitration commences; that is, when the arbitrators are appointed and when costs may be incurred. Whether or to what extent costs have been incurred is not material; the rule is the same in all cases (*Gray v. N. E. Ry. Co.*, 1876, 1 Q. B. D. 696; *Fitzhardinge v. Gloucester Canal Co.*, 1872, L. R. 7 Q. B. 776; and see also *Yates v. Mayor, &c. of Blackburn*, 1860, 6 H. & N. 61, where an offer made after the landowner had appointed his arbitrator, but before he had delivered the appointment to him, was in time).

Time for
payment
of costs.

The costs are payable to the landowner a reasonable time after they have been settled, irrespective of the question whether he can show a good title, provided his claim to the land is *bonâ fide*; and the execution by him of the

conveyance of the lands taken is not a condition precedent to the payment of the costs (*Capell v. G. W. Ry. Co.*, 1883, 11 Q. B. D. 345). Section 34.

Though perhaps it is otherwise in a claim under sect. 68, where it is the party claiming who puts the machinery of the Act in motion. If he fails to establish his claim, it may be quite right that he should not have the costs of the inquiry (per Cotton, L. J., in *S. C.* p. 350, referring to *Todd v. Metrop. Dist. Ry. Co.*, 1871, 24 L. T. 435; and see *Sharpe v. Metrop. Dist. Ry. Co.*, 1879, 4 Q. B. D. 645, pp. 652, 656). Failure to establish claim under s. 68.

Costs under this section are not secured by any lien on the land sold (*Earl Ferrers v. Stafford & Uttoxeter Ry. Co.*, 1872, 13 Eq. 524). Recovery of costs.

They are recoverable by action (see *Collins v. S. Staff. Ry. Co.*, 1851, 7 Ex. 5), notwithstanding that the landowner gave no notice of the amount of compensation claimed (*Martin v. Leicester W. W. Co.*, 1858, 27 L. J. Ex. 432).

An action can be maintained for costs under this section although the amount has not been previously settled by taxation (*Metrop. Dist. Ry. Co. v. Sharpe*, 1880, 5 App. Cas. 425).

For payment of costs of arbitration out of compensation paid into Court, see *infra*, p. 248.

For taxation of costs, see Act of 1869, sect. 1. As to staying the taxation, see *Re London School Board* (1892, Times, March 1). Taxation.

Delivery and Custody of Award.

XXXV. The arbitrators shall deliver their award in writing to the promoters of the undertaking, and the said promoters shall retain the same, and shall forthwith, on demand, at their own expense, furnish a copy thereof to the other party to the arbitration, and shall at all times, on demand, produce the said award, and allow the same to be inspected or examined by such party or any person appointed by him for that purpose. Section 35.
Award to be delivered to promoters, who are to furnish copies.

The Court will, at the landowner's instance, compel the company to take up the award, and the promoters must for that purpose pay the fees due on the award, the *Mandamus* to compel company to take up award.

Section 35. arbitrators or umpire having a lien on the award for them (*Reg. v. S. Deron Ry. Co.*, 15 Q. B. 1043). The company must take up the award and raise any defence they have on the ground of the claimant's want of title to compensation in his action on the award (*L. & N. W. Ry. Co. v. Walker*, 1900, A. C. 109; *Reg. v. Cambrian Ry. Co.*, 1869, L. R. 4 Q. B. 320, where a denial that the lands had been "injuriously affected" under sect. 68 was allowed to be a good return to a *mandamus*, seems to be overruled). But a return that the company have already paid agreed compensation is good (*Reg. v. W. Mid. Ry. Co.*, 1863, 11 W. R. 857).

It is no answer to an application for *mandamus* that the award has been based upon a wrong statute (*L. & N. W. Ry. Co. v. Walker*, *supra*).

Form of
remedy.

The remedy is by prerogative writ of *mandamus*, not by an action of *mandamus*:—

Notwithstanding the rule laid down in *Reg. v. Lambourn Valley Ry. Co.* (1888, 22 Q. B. D. 463), that the prerogative writ of *mandamus* is not available where an action of *mandamus* lies, the proper practice to compel a company to take up an award under this section is still by the prerogative writ (*Reg. v. L. & N. W. Ry. Co.*, 1894, 2 Q. B. p. 518).

The remedy against a public body for neglect of duty is by prerogative writ of *mandamus*, and is confined to the Q. B. D. The *mandamus* spoken of in sect. 25 (8) of the Judicature Act, 1873, is not the prerogative *mandamus*, but only a *mandamus* to compel the performance of some act the doing of which is directed as the result of an action (*Glossop v. Heston, &c. Local Board*, 1879, 12 C. D. 102, see per Brett, L. J., p. 122).

Ex parte
proceed-
ings.

It seems to be doubtful whether, in a case where the landowner proceeds to appoint an arbitrator *ex parte* under sect. 25, the company can be compelled to take up the award (*Reg. v. W. Mid. Ry. Co.*, 1862, 10 W. R. 583).

If the landowner pays the umpire's fees himself and takes up the award, he cannot recover the amount so paid from the company (*Earl of Shrewsbury v. Wirral Rys. Committee*, 1895, 2 Ch. 812).

Submission a Rule of Court.

Section 36.

XXXVI. The submission to any such arbitration may be made a rule of any of the Superior

Courts, on the application of either of the Section 36. parties..

By sect. 1 of the Arbitration Act, 1889, "a submission, unless a contrary intention is expressed therein, shall be irrevocable, except by leave of the Court or a judge, and shall have the same effect in all respects as if it had been made an order of Court"; and by sect. 24 the Act applies "to every arbitration under any Act passed before or after the commencement of this Act as if the arbitration were pursuant to a submission, except in so far as this Act is inconsistent with the Act regulating the arbitration or with any rules or procedure authorized or recognized by that Act." The effect of sect. 24 is to apply the arbitration provisions to arbitrations under the Lands Clauses Act, except so far as such provisions are inconsistent with the procedure of the Lands Clauses Act (see *Zelma Gold Mining Co. v. Hoskins*, 1895, A. C. p. 103). It would seem that, inasmuch as sect. 36 is permissive only, it is not now necessary for the submission to be made a rule of Court.

Submis-
sion need
not be
made a
rule of
Court.

Under sect. 12 of the Arbitration Act, 1889, "an award on a submission may, by leave of the Court or a judge, be enforced in the same manner as a judgment or order to the same effect." By R. S. C. Ord. 42, r. 31 A., "an award may, with the leave of the Court or a judge, and on such terms as may be just, be enforced at any time, though the time for moving to set it aside has not elapsed." Under this provision an award under the L. C. A., 1845, may be enforced as a judgment (*cf. Lindsay v. Direct London & Portsmouth Ry. Co.*, 1850, 1 Prac. Cas. 529, where payment of the amount of the award was enforced under the Judgments Act, 1838, 1 & 2 Vict. c. 110, s. 18). But this will be done only in a clear case (*Mackenzie v. Sligo, &c. Ry. Co.*, 1850, 9 C. B. 250), and if any question arises on the award, the proper course is for the claimant to bring an action for the amount of the award (see, *e.g.*, *Louther v. Cal. Ry. Co.*, 1892, 1 Ch. 73; and *cf. Re Newbold & Met. Ry. Co.*, 1863, 14 C. B. N. S. 405; *Re Walker & Beckenham Local Board*, 1884, 50 L. T. 207). In such an action the company may not dispute the amount of the award, but may dispute that compensation is due (see *Brierley Hill Local Board v. Pearsall*, 1884, 9 App. Cas. 595, 601).

Enforcing
the award.

Section 36. The arbitrator, as in the case of the sheriff's jury, may settle only the amount, and not the question of the liability of the company to pay compensation. And if the company refuse to pay, the owner must enforce his claim by action, and not by an application to the Court to enforce the award (*Re Newbold & Met. Ry. Co.*, 1863, 14 C. B. N. S.).

Appeal. As to appeal against amount of award in a case under the Housing of the Working Classes Act, 1890 (see *supra*, p. 112).

Defence that no compensation due. In an action on the award the company may traverse that any compensation is due in respect of part of the matter for which a lump sum has been awarded, and in this case the award is bad (*Beckett v. Midland Ry. Co.*, 1866, L. R. 1 C. P. 241).

But the award is *prima facie* evidence of damage, the subject of compensation, inasmuch as it is to be presumed, until the contrary appears, that compensation has only been given for damage within the Act under which it is claimed (*Rhodes v. Airedale Drainage Commissioners*, 1876, 1 C. P. D. 402).

Questions which may be put to arbitrator. An arbitrator may be called as a witness in a legal proceeding to enforce the award, and he may in such proceeding be asked questions as to what passed before him, and as to what matters were presented to him for consideration, but no questions can be put to him as to what passed in his own mind when exercising his discretionary power on the matters submitted to him (*Duke of Buccleuch v. Metrop. B. W.*, 1872, L. R. 5 H. L. 418).

Compensation not due till title shown and conveyance executed. Where, after notice to treat, the price is fixed by arbitration, an action cannot be maintained for the amount until a conveyance of the land has been executed (*East London Union v. Met. Ry. Co.*, 1869, L. R. 4 Ex. 309).

A claim against a limited company by a landowner for the amount of purchase and compensation money assessed by arbitration under this Act does not, until the title has been accepted and investigated by the company, constitute a debt in respect of which the creditor can apply for winding-up under sect. 82 of the Companies Act, 1862 (*Re Milford Docks Co.*, 1883, 23 C. D. 292).

Action stayed till outstanding points in dispute settled. Where the landowner brought an action on the award, and at the same time another action to enforce rights which he alleged were not included in the award, but which the company insisted were so included, the action on

the award was restrained until the hearing of the action to enforce the rights (*Metrop. Board of Works v. M. of Salisbury*, 1872, 26 L. T. 390). Section 36.

Award not to be set aside through Error in Form.

XXXVII. No award made with respect to any question referred to arbitration under the provisions of this or the special Act shall be set aside for irregularity or error in matter of form. Section 37.

Award not set aside for irregularity.

Defects in the claimant's notice under sects. 23 and 68 do not constitute a valid objection to the award (*Reg. v. Sutton Harbour Commissioners*, 1853, 2 W. R. 10). Defects in notice of claim.

Where the award recited that the umpire had heard the evidence produced by the company and the claimant, and no evidence had been produced by the company, this was held not to be an objection to the award (*Skerratt v. N. Staff. Ry. Co.*, 1848, 5 Ry. Cas. 166, p. 178). Untrue recital.

It is highly improper—though not *per se* a ground for setting aside an award—for the arbitrator to employ the solicitor of one of the parties to the reference (though his own solicitor also) to assist him in framing the award (*Re Underwood & Bedford, &c. Ry. Co.*, 1861, 11 C. B. N. S. 442). And as to bias in an arbitrator, see *Re Haigh & L. & N. W. Ry. Co.*, 1896, 1 Q. B. 649. Arbitrator accepting assistance from solicitor of one party.

Though in form the umpire has no power to order the company to pay, such informality will not vitiate the award so far as it determines the amount of compensation, assuming, of course, the company to be liable (*Harper v. G. E. Ry. Co.*, 1875, 20 Eq. 39; *Lindsay v. Direct London & Portsmouth Ry. Co.*, 1850, 1 Prac. Cas. 529). Order to pay.

The award will not be set aside on the ground that it is contrary to the evidence (*Re Bradshaw's Arbitration*, 1848, 12 Q. B. 562). Award contrary to evidence.

The evidence of the arbitrator will be admitted in explanation of his award, and if he has been mistaken either as to the subject-matter referred to him, or as to a legal principle affecting the basis of the award, the award will be set aside or referred back (*Re Dare Valley Ry. Co.*, 1868, 6 Eq. 429.) Error of arbitrator.

The award will be invalid if made in the absence of one of the parties without notice to him (*Re Hanley & N. Staff. Ry. Co.*, 1848, 5 Rail. Cas. 383). Absence of party.

Section 37.

Inclusion
of matters
outside
reference.

If a lump sum be awarded by an arbitrator, and it appear on the face of the award, or be proved by extrinsic evidence, that in arriving at the lump sum matters were taken into account which the arbitrator had no jurisdiction to consider, the award is bad. But where, upon the evidence taken in the reference, there is a possibility that the arbitrator has included in the award matters not within his jurisdiction, the award is not bad because this possibility is not in terms excluded on its face (*Falkingham v. Victorian Rys. Commissioner*, (1900) A. C. 452).

Time for
setting
aside
award.

R. S. C., 1883, Ord. 64, r. 14, provides that an application to set aside an award may be made at any time before the last day of the sittings next after such award has been made and published to the parties. This limit applies to awards under the Lands Clauses Act (see *Re Harper*, 1875, 20 Eq. 39). It is sufficient if notice of motion is given before the last day of the sittings, although the application is not heard till subsequently (*Re Corp. of Huddersfield & Jacomb*, 1874, 10 Ch. 92; *Re Gallop & Central Queensland Co.*, 1890, 25 Q. B. D. 230). The notice of motion should specify the grounds of objection. An objection on "good grounds" is insufficient (*Mercier v. Pepperell*, 1881, 19 C. D. 58). Time can be extended under r. 7 of the same order (*Re Oliver & Scott's Arbitration*, 1889, 43 C. D. 310).

Proceed-
ings where
arbitra-
tion abor-
tive.

Where an arbitration fails, the proper remedy is by *mandamus* to compel the company to summon a jury under sect. 23 (*Lind v. I. of W. Ferry Co.*, 1862, 1 N. R. 13; *Ex p. Senior*, 1849, 7 D. & L. 36; *Falconer v. Aberdeen Ry. Co.*, 1853, 15 Sess. Cas. (2nd series) 352).

(5.) PROCEEDINGS BEFORE A JURY.

- § 38. Notice to be given by the Promoters.
- § 39. Warrant addressed to Sheriff. If Sheriff interested, then to Coroner, &c.
- § 40. Coroner to have same Powers as Sheriff.
- § 41. Summoning of Jury.
- § 42. Impanelling of Jury.
- § 43. Sheriff to Preside. Witnesses. View.
- § 44. Penalty on Sheriff and Jury for Default.
- § 45. Penalty on Witness for Default.
- § 46. Notice of Inquiry.
- § 47. If Party claiming fail to appear, Inquiry not to proceed.
- § 48. Jury to be sworn.
- § 49. Separate Assessment of Amount of Purchase Money and Compensation for Damage.
- § 50. Verdict and Judgment to be recorded.
- § 51. Costs.
- § 52. What Costs include.
- § 53. Payment and Recovery of Costs.
- § 54. Special Jury.
- § 55. Deficiency of Special Jurymen.
- § 56. Other Inquiries before same Special Jury by Consent.
- § 57. Attendance of Jurymen.

Notice to be given by the Promoters.

XXXVIII. Before the promoters of the undertaking shall issue their warrant for summoning a jury for settling any case of disputed compensation they shall give not less than ten days' notice to the other party of their intention to cause such jury to be summoned; and in such notice the promoters of the undertaking shall state what sum of money they are willing to give for the interest in such lands sought to be purchased by

Section 38.
Promoters to give ten days' notice before summoning jury, with offer of sum for purchase and damage.

Section 38. them from such party, and for the damage to be sustained by him by the execution of the works.

Section does not apply to sect. 68.

This section does not apply to proceedings under sect. 68 (*Railston v. York, &c. Ry. Co.*, 1850, 15 Q. B. 404; see *S. E. Ry. Co. v. Richardson*, 1855, 15 C. B. 810, p. 821; *Re Haycard & Met. Ry. Co.*, 1864, 4 B. & S. 787; *Reg. v. Smith*, 1883, 12 Q. B. D., p. 488); as to the time when the offer may be made in such cases, see *infra*, p. 147.

Where company have not entered, the offer under this section governs costs.

Although the promoters have given a bond and paid a deposit under sect. 85 with a view to entry on the lands, yet if they have not actually entered the proceedings are regulated by this section, and not by sect. 68; hence an offer by the company to be effectual for the purpose of regulating the liability to costs under sect. 51 must be contained in the notice given under this section (*Reg. v. Smith*, 1892, 40 W. R. 333; *Burkinshaw v. Birmingham, &c. Ry. Co.*, 1850, 5 Ex. 475).

Withdrawal of notice for jury.

It is doubtful whether the company can withdraw a notice to summon a jury, but if they do so and the landowner makes no objection, it would seem that the offer is withdrawn also (*Fitzhardinge v. Gloucester, &c. Canal Co.*, 1872, L. R. 7 Q. B. 776, p. 782; and see *infra*, p. 151).

Warrant addressed to Sheriff or Coroner.

Section 39.

Where compensation to be determined by jury, promoters issue warrant to sheriff to summon jury; or, if sheriff interested, to coroner, &c.

XXXIX. In every case in which any such question of disputed compensation shall be required to be determined by the verdict of a jury the promoters of the undertaking shall issue their warrant to the sheriff, requiring him to summon a jury for that purpose, and such warrant shall be under the common seal of the promoters of the undertaking if they be a corporation, or if they be not a corporation under the hands and seals of such promoters or any two of them; and if such sheriff be interested in the matter in dispute such application shall be made to some coroner of the county in which the lands in question, or some part thereof, shall be situate; and if all the coroners of such county be so interested such application may be made to some person having

filled the office of sheriff or coroner in such county, and who shall be then living there, and who shall not be interested in the matter in dispute; and with respect to the persons last mentioned, preference shall be given to one who shall have most recently served either of the said offices; and every ex-sheriff, coroner, or ex-coroner shall have power, if he think fit, to appoint a deputy or assessor. Section 39.

In cases within the city of Westminster the high bailiff and his deputy are substituted for the sheriff (Lands Clauses Act, 1869, s. 3 (*infra*, p. 366)).

In railway cases, where any question of compensation for lands taken or injuriously affected is to be settled by the verdict of a jury under the L. C. A., either party may at any time before the warrant is issued to the sheriff apply to a judge of the High Court to have the trial taken in the High Court, and it will be held in such manner as the judge shall order (Regulation of Railways Act, 1868, s. 41). Alternative procedure in railway cases by trial in High Court.

The trial in the High Court under the above section is confined to the amount of compensation. There is no jurisdiction at this stage to determine the question of title to compensation. And probably the reference may not be to a judge sitting without a jury (*Re East London Ry. Co., Oliver's Claim*, 1890, 24 Q. B. D. 507). A new trial cannot be ordered (*Birmingham, &c. Land Co. v. L. & N. W. Ry. Co.*, 1889, 22 Q. B. D. 435); but if the judge decides a question as to the title of the claimant to compensation, an appeal lies (*cf. New River Co. v. Mid. Ry. Co.*, 1877, 36 L. T. 539).

If compensation is claimed under sect. 68, and the company desire to have the amount assessed in the High Court under the above section, they must issue the summons so as to make it returnable and enable an order to be made within twenty-one days of the landowner's notice for a jury; otherwise the judge will have no jurisdiction to make the order, and the company will be liable to pay the full amount of the claim (*Tanner v. Scindon, &c. Ry. Co.*, 1881, 45 L. T. 209). In case under sect. 68, order for trial must be made within twenty-one days of landowner's notice for jury.

The jurisdiction under sect. 41 may, except as to settling an issue in case of difference, be exercised by a master under R. S. C., Ord. 54, r. 12, and it is sufficient if the

Section 39. master's order is made before warrant is issued to the sheriff, though the order is reversed on appeal (*Re Donisthorpe & M. S. & L. Ry. Co.*, 1897, 1 Q. B. 671).

Warrant must not include interests of different persons.

The interests of different persons interested in the property must be assessed separately. Hence the company cannot include them in the same warrant to the sheriff (*Abrahams v. Mayor of London*, 1868, 6 Eq. 625), leaving it to the different parties to divide among themselves the sum awarded by the jury, or to have a fresh jury summoned to determine what aliquot share belongs to each (*Starr v. Mayor of London*, 1869, 7 Eq., p. 239; see *R. v. Trustees of Norwich, &c. Road*, 1836, 5 A. & E. 563).

But may include different claims of same person.

But when there is only one person who has different claims and interests in the property, or in different properties, all of which are taken by the company, the company are entitled to have them all assessed together (*S. C.*; *Abrahams & Starr's cases* were decided on the London (City) Improvement Act, 1847).

And must include all of a block of houses.

Where notice has been served to treat for four houses, the property of the same owner, the promoters cannot summon a jury to assess the value of one of the houses separately (*Ecc. Commissioners v. Commissioners of Sewers*, 1880, 14 C. D. 305, on 57 Geo. 3, c. xxix.).

Land specified in warrant must correspond with notice to treat.

The company, in the warrant to the sheriff, must specify the same land as that specified in the notice to treat, unless the parties have agreed as to the value of a part. In the absence of such agreement a jury precept cannot be issued to assess the value of a part only of the land contained in the notice—at any rate where the whole land is situate in the same district (*Stone v. Commercial Ry. Co.*, 1839, 1 Ry. Cas. 375). But a variation between the description in the notice and in the warrant to the sheriff is an irregularity merely, which will be waived if the party appears before the jury, and, after objecting, proceeds in the trial (*Ex p. Bailey*, 1852, Bail. C. C. 66).

No second warrant necessary where inquisition quashed.

The proceedings under a warrant being quashed, the sheriff is bound to summon a fresh jury, under the authority of the warrant already issued (*Horrocks v. Met. Ry. Co.*, 1865, 19 C. B. N. S. 139; see *Tanner v. Swindon, &c. Ry. Co.*, 1881, 45 L. T. 209).

Mandamus to compel company to proceed.

If the company allow an unreasonable time to elapse after the notice to treat without taking further proceedings, an action of *mandamus* will lie to compel them to comply with this section, and for the purpose of the action it is

not necessary to prove actual damage (*Fotherby v. Met. Ry. Co.*, 1866, L. R. 2 C. P. 188; *Morgan v. Metrop. Ry. Co.*, 1868, L. R. 4 C. P. 97). Section 39.

If the under-sheriff improperly allows an objection to the description of the property and declines to proceed with the trial, a *mandamus* will issue to compel him to execute the precept (*Walker v. London & Blackwall Ry. Co.*, 1842, 3 Q. B. 744).

An interlocutory application for a *mandamus* will not be granted unless it can be shown that the plaintiff will suffer injury by waiting for the result of the action (*Widnes Alkali Co. v. Sheffield, &c. Committee*, 1877, 37 L. T. 131).

Disqualifying interest.—The interest must be direct and certain, and not remote and contingent (*Reg. v. M. S. & L. Ry. Co.*, 1867, L. R. 2 Q. B. 336), such as being a shareholder in the company (*Reg. v. L. & N. W. Ry. Co.*, 1863, 12 W. R. 208), or a ratepayer under a corporation (*Reg. v. Sheriff of Warwickshire*, 1855, 3 W. R. 164; and as to disqualifying interest, see *Reg. v. Rand*, 1866, L. R. 1 Q. B. 230; *Wakefield Local Board v. W. Riding, &c. Ry. Co.*, 1865, 6 B. & S. 794). Interest must be direct.

A sheriff who was a shareholder in a company which had an executory agreement for amalgamation with the company issuing the warrant, was held not to be interested within the meaning of this section (*Reg. v. M. S. & L. Ry. Co.* (*supra*)). Shareholder in company contemplating amalgamation.

The warrant will be bad if the sheriff is interested and the claimant is not aware of the fact, but in such a case he may consent to the issue of the warrant (*Reg. v. Sheriff of Warwickshire*, 1855, 3 W. R. 164; *Ex p. Baddeley*, 1849, 5 Ry. Cas. 542); and if, previously to the inquiry, he is informed of the interest and takes no objection till after verdict, he will be deemed to have consented (see *Corregal v. London & Blackwall Ry. Co.*, 1843, 3 Ry. Cas. 411, p. 422). Waiver of objection.

Where the sheriff was not interested, but the under-sheriff, who was interested, presided at the inquiry, and the warrant was directed to the sheriff, it was held to be good, and the improper conduct of the inquiry was held not to be the act of the company so as to render them liable in damages for the proceedings being quashed (*Worsley v. S. Devon Ry. Co.*, 1851, 16 Q. B. 539). Under-sheriff interested. Sheriff not interested.

Where there are two sheriffs and one is interested, the warrant should go to the other, and not to the coroner (*Letsom v. Bickley*, 1816, 5 M. & S. 144). Two sheriffs.

*Coroner to have the same Powers as Sheriff.***Section 40.**

Enact-
ments re-
lating to
"sheriff"
to apply to
coroner,
&c.

XL. Throughout the enactments contained in this Act relating to the reference to a jury, where the term "sheriff" is used, the provisions applicable thereto shall be held to apply to every coroner or other person lawfully acting in his place; and in every case in which any such warrant shall have been directed to any other person than the sheriff such sheriff shall, immediately on receiving notice of the delivery of the warrant, deliver over, on application for that purpose, to the person to whom the same shall have been directed, or to any person appointed by him to receive the same, the jurors' book and special jurors' list belonging to the county where the lands in question shall be situate.

*Summoning of Jury.***Section 41.**

Sheriff to
summon
jury of
twenty-
four to
meet not
less than
fourteen
days, nor
more than
twenty-
one, after
receipt of
warrant.

XLI. Upon the receipt of such warrant the sheriff shall summon a jury of twenty-four indifferent persons, duly qualified to act as common jurymen in the Superior Courts, to meet at a convenient time and place to be appointed by him for that purpose, such time not being less than fourteen nor more than twenty-one days after the receipt of such warrant, and such place not being more than eight miles distant from the lands in question, unless by consent of the parties interested, and he shall forthwith give notice to the promoters of the works of the time and place so appointed by him.

Where land injuriously affected is in a city, and the works are in the county, compensation is rightly assessed by a jury of the city (*Reg. v. G. N. Ry. Co.*, 1849, 14 Q. B. 25).

If the inquisition is quashed, the sheriff must summon a

second jury without the issue of a fresh warrant (*Horrocks v. Met. Ry. Co.*, 1865, 19 C. B. N. S. 139). Section 41.

The sheriff cannot, save by consent, direct a postponement of the inquiry beyond the time limited in the section (*Galloway v. Corp. of London*, 1866, 12 Jur. N. S. 182). Postponement of inquiry.

Impanelling of Jury.

XLII. Out of the jurors appearing upon such summons a jury of twelve persons shall be drawn by the sheriff, in such manner as juries for trials of issues joined in the Superior Courts are by law required to be drawn; and if a sufficient number of jurymen do not appear in obedience to such summons the sheriff shall return other indifferent men, duly qualified as aforesaid, of the bystanders, or others that can speedily be procured, to make up the jury to the number aforesaid; and all parties concerned may have their lawful challenges against any of the jurymen, but no such party shall challenge the array. Section 42.
Jury of twelve to be drawn, subject to challenge.

The Court will not set aside a verdict upon an inquiry under this Act upon the ground of disqualification in the jurymen: the remedy in such a case is by challenge (*Re Chelsea W. W. Co.*, 1855, 10 Ex. 731). As to substitution before the inquiry of a new jurymen in the place of one who is ill, see *Cooling v. G. N. Ry. Co.*, 1850, 15 Q. B. 486). Objection to jury-men must be by challenge.

Sheriff to Preside. Witnesses. View.

XLIII. The sheriff shall preside on the said inquiry, and the party claiming compensation shall be deemed the plaintiff, and shall have all such rights and privileges as the plaintiff is entitled to in the trial of actions at law; and if either party so request in writing, the sheriff shall summon before him any person considered necessary to be examined as a witness touching the matters in question; and on the like request the Section 43.
Procedure on inquiry.

Section 43. sheriff shall order the jury, or any six or more of them, to view the place or matter in controversy, in like manner as views may be had in the trial of actions in the Superior Courts.

Sheriff
must
adhere to
warrant.

The sheriff who has to act under the warrant must act in direct and strict accordance with it, and the verdict and all the proceedings must follow its terms, and he has no discretion to depart from it in any respect (*Abrahams v. Mayor of London*, 1868, 6 Eq. p. 634).

Claimant
to begin.

Similar words in a local Act, with respect to the claimant being in the position of plaintiff, were said to be intended to regulate the general course of the proceedings, to remove doubts concerning the right to begin, and to show, in other respects, how the inquisition should be conducted; but they did not regulate the right to costs (*R. v. Gardner*, 1837, 6 A. & E. 112, p. 117. See *Reg. v. Sheriff of Warwickshire*, 1841, 2 Ry. Cas. 661).

Penalty on Sheriff and Jury for Default.

Section 44.

Sheriff and
jury to be
subject to
fine for
default.

XLIV. If the sheriff make default in any of the matters hereinbefore required to be done by him in relation to any such trial or inquiry, he shall forfeit £50 for every such offence, and such penalty shall be recoverable by the promoters of the undertaking by action in any of the Superior Courts; and if any person summoned and returned upon any jury under this or the special Act, whether common or special, do not appear, or if appearing he refuse to make oath, or in any other manner unlawfully neglect his duty, he shall, unless he show reasonable excuse to the satisfaction of the sheriff, forfeit a sum not exceeding £10, and every such penalty payable by a sheriff or jurymen shall be applied in satisfaction of the costs of the inquiry, so far as the same will extend; and, in addition to the penalty hereby imposed every such jurymen shall be subject to the same regulations, pains, and penalties as if

such jury had been returned for the trial of an issue joined in any of the Superior Courts. Section 44.

The neglect of the sheriff does not interfere with the rights of the parties (*Horrocks v. Met. Ry. Co.*, 1865, 19 C. B. N. S. p. 147). Right of parties unaffected.

Penalty on Witness for Default.

XLV. If any person duly summoned to give evidence upon any such inquiry, and to whom a tender of his reasonable expenses shall have been made, fail to appear at the time and place specified in the summons, without sufficient cause, or if any person, whether summoned or not, who shall appear as a witness refuse to be examined on oath touching the subject matter in question, every person so offending shall forfeit to the party aggrieved a sum not exceeding £10. Section 45.
Witness to be subject to fine for default.

Notice of Inquiry.

XLVI. Not less than ten days' notice of the time and place of the inquiry shall be given in writing by the promoters of the undertaking to the other party. Section 46.
Ten days' notice to be given.

This provision is imperative and not merely directory, but it may be dispensed with by the party for whose benefit it was intended, and the claimant will be deemed to have dispensed with it if he acquiesces in the proceeding with the inquiry without notice, as where he appears before the sheriff and agrees to the fixing of the day (*Lang v. Glasgow Court-House Commissioners*, 1871, 9 Sess. Cas. 3rd Series, 768, on the L. C. C. (Scotland) Act, 1845). Dispensing with notice.

In proceeding before a jury under sect. 68, the company may make their offer at any time not later than the giving of notice under this section (*Hayward v. Met. Ry. Co.*, 1864, 4 B. & S. 787; *Met. Ry. Co. v. Turnham*, 1863, 14 C. B. N. S. 212; but see *infra*, p. 180). Offer.

If party claiming fail to appear, Inquiry not to proceed.

Section 47.

Where claimant fails to appear, compensation to be ascertained by surveyor.

XLVII. If the party claiming compensation shall not appear at the time appointed for the inquiry such inquiry shall not be further proceeded in, but the compensation to be paid shall be such as shall be ascertained by a surveyor appointed by two justices in manner hereinafter provided.

See sects. 58 *et seq.*

Jury to be sworn.

Section 48.

Jury and witnesses to be sworn by sheriff.

XLVIII. Before the jury proceed to inquire of and assess the compensation or damage in respect of which their verdict is to be given they shall make oath that they will truly and faithfully inquire of and assess such compensation or damage; and the sheriff shall administer such oaths as well as the oaths of all persons called upon to give evidence.

Separate Assessment of Amount of Purchase Money and Compensation.

Section 49.

Assessment of purchase price of lands taken and compensation for damage by severance, &c. to be made in separate sums.

XLIX. Where such inquiry shall relate to the value of lands to be purchased, and also to compensation claimed for injury done or to be done to the lands held therewith, the jury shall deliver their verdict separately for the sum of money to be paid for the purchase of the lands required for the works, or of any interest therein belonging to the party with whom the question of disputed compensation shall have arisen, or which under the provisions herein contained he is enabled to sell or convey, and for the sum of money to be paid by way of compensation for the damage, if

any, to be sustained by the owner of the lands by reason of the severing of the lands taken from the other lands of such owner, or otherwise injuriously affecting such lands by the exercise of the powers of this or the special Act, or any Act incorporated therewith. Section 49.

The jury may find that there is no damage (*Reg. v. Lancaster & Preston, &c. Ry. Co.*, 1845, 6 Q. B. 759). Finding of no damage.

As to the principles of assessment, see *supra*, p. 113 *et seq.*

As to what entitles the landowner to claim under the head of severance, see sect. 63. Damages for severance.

The requirements of this section are directory and not imperative (*Re Bradshaw's Arbitration*, 1848, 12 Q. B. 562, p. 572); and whichever party requires the separate assessment must call for it; otherwise the jury may return a lump sum (*Re London & Greenwich Ry. Co.*, 1835, 2 A. & E. 678; *Corrigal v. London & Blackwall Ry. Co.*, 1843, 5 M. & Gr. p. 249). Section is directory.

Where counsel before the jury agree that a verdict shall be taken for a lump sum, this includes damages for loss of trade and severance, but is not restricted to such interest (if any) as the claimant has. It covers the interest claimed and the question of title is left open (*Re Charles Hayne*, 1865, 13 W. R. 492). Effect of verdict for lump sum.

Verdict and Judgment to be recorded.

L. The sheriff before whom such inquiry shall be held shall give judgment for the purchase money or compensation assessed by such jury; and the verdict and judgment shall be signed by the sheriff, and being so signed shall be kept by the clerk of the peace among the records of the general or quarter sessions of the county in which the lands or any part thereof shall be situate in respect of which such purchase money or compensation shall have been awarded; and such verdicts and judgments shall be deemed records, and the same or true copies thereof shall be good evidence in all courts and elsewhere; and all Section 50.
Sheriff to give judgment for amount of verdict, and judgment and verdict to be recorded at quarter sessions.

Section 50. persons may inspect the said verdicts and judgments, and may have copies thereof or extracts therefrom, on paying for each inspection thereof one shilling, and for every one hundred words copied or extracted therefrom sixpence, which copies or extracts the clerk of the peace is hereby required to make out, and to sign and certify the same to be true copies.

**Evidence
of verdict.**

If the verdict is not signed and recorded as required by this section, it seems that parol evidence of it can be given (*Manning v. Eastern Counties Ry. Co.*, 1843, 12 M. & W. 237). Recording is not essential to its validity (*Chabot v. Lord Morpeth*, 1850, 15 Q. B. 446).

**Form of
judgment.**

The judgment must set forth such facts as show that the tribunal had jurisdiction, and must show in what respect it had jurisdiction; but it need not set forth all the facts or all the particulars out of which its jurisdiction arises (*Taylor v. Clemson*, 1842, 2 Q. B. 978; 1844, 11 Cl. & F. 610, p. 640; and see *Ostler v. Cooke*, 1849, 13 Q. B. 143; 1852, 18 Q. B. 831; *Doe v. Bristol & Exeter Ry. Co.*, 1840, 6 M. & W. 320).

**Re-trial
not
ordered.**

A re-trial cannot be ordered on the ground of misdirection or that the verdict is against the weight of the evidence (*Reg. v. Eastern Counties Ry. Co.*, 1843, 3 Ry. Cas. 466; *Reg. v. L. & N. W. Ry. Co.*, 1854, 3 E. & B. p. 475).

If there is jurisdiction to entertain the claim, and if there is any evidence before the jury to warrant the award of damages, then, in an action on the award, the plaintiff must recover, however excessive the amount of damages, however erroneous the law laid down to the jury, however wrong the principle which they adopted (*Metrop. Board of Works v. Howard*, 1889, 5 T. L. R. 732, per Lord Herschell; see per Lord Halsbury, L. C., in *Couper Essex v. Acton L. B.*, 1889, 14 App. Cas. p. 160, referred to *infra*, p. 352; *Brown v. Railways Commissioners*, 1890, 15 App. Cas. 240; *R. v. Mayor of Halifax*, 1866, 14 L. T. 447; and as to *certiorari* in cases of excess of jurisdiction, see cases quoted under sect. 145).

Costs.

LI. On every such inquiry before a jury, where the verdict of the jury shall be given for a greater sum than the sum previously offered by the promoters of the undertaking, all the costs of such inquiry shall be borne by the promoters of the undertaking; but if the verdict of the jury be given for the same or a less sum than the sum previously offered by the promoters of the undertaking, or if the owner of the lands shall have failed to appear at the time and place appointed for the inquiry, having received due notice thereof, one half of the costs of summoning, impanelling, and returning the jury, and of taking the inquiry and recording the verdict and judgment thereon, in case such verdict shall be taken, shall be defrayed by the owner of the lands, and the other half by the promoters of the undertaking, and each party shall bear his own costs, other than as aforesaid, incident to such inquiry.

Section 51.

If verdict exceeds sum offered, promoters pay costs: otherwise costs of holding inquiry are divided, and each party bears his own costs.

The "sum previously offered" is the sum which the company "are willing to give," and which by sect. 38 they are bound to state in the notice of their intention to cause a jury to be summoned (*Pearson v. G. N. Ry. Co.*, 1870, 18 W. R. 259; L. R. 7 Q. B. 785, note; see *Ross v. York, &c. Ry. Co.*, 1849, 5 D. & L. 695). It need not be stated in the inquisition (*Reg. v. Swansea Harbour Trustees*, 1839, 8 A. & E. 439).

"Sum previously offered."

The offer must be made in the notice. It is useless if made separately (*Reg. v. Smith*, 1892, 40 W. R. 333), or if made subsequently (*Reg. v. Smith*, 1883, 12 Q. B. D. 481); though, perhaps, if the notice of the intention to cause a jury to be summoned, coupled with the offer of the sum the promoters were willing to give, were formally withdrawn, and another notice were given not less than ten days before the summoning of the jury, and another offer of a larger sum substituted in that notice, it would be a good offer under sect. 38, and one upon which the promoters could rely with respect to the question of costs

Offer must be in notice.

But offer may be amended.

Section 51. (*Reg. v. Smith*, 1883, 12 Q. B. D., per Coleridge. L. C. J., p. 487; see *supra*, p. 140).

Offer not to include costs.

Time for offer in cases under sect. 68.

The offer must not include a sum for costs (*Balls v. Metrop. Board of Works*, 1866, L. R. 1 Q. B. 337).

The section applies to references to a jury under sect. 68 (*Re Hayward & Met. Ry. Co.*, 1864, 4 B. & S. 787, 795; *S. E. Ry. Co. v. Richardson*, 1855, 15 C. B. 810); but in such proceedings the offer of the company may be made when notice of the place of inquiry is given under sect. 46, or, if made earlier, may be amended up to that time (*Re Hayward & Met. Ry. Co.*, *supra*; *Met. Ry. Co. v. Turnham*, 1863, 11 W. R. 695); or, perhaps it must be made before the claimant has incurred any costs, as, for instance, by the nomination of a special jury (*Balls v. Metrop. B. W.*, 1866, L. R. 1 Q. B. 337).

Separate items.

As to costs where separate offers are made in respect of separate items, see *supra*, p. 132.

Claimant failing to show title.

As to the costs of a claimant who fails to show title to the compensation awarded, see *supra*, pp. 132, 133.

Inquiry under sect. 94.

This section does not apply to the costs of an inquiry under sect. 94 to ascertain the value of a small severed parcel of land (*infra*, p. 288).

What is included in Costs.

Section 52.

Costs to be settled by master and to include costs of witnesses, and of legal assistance.

LII. The costs of any such inquiry shall, in case of difference, be settled by one of the masters of the Court of Queen's Bench of England or Ireland, according as the lands are situate, on the application of either party, and such costs shall include all reasonable costs, charges, and expenses incurred in summoning, impanelling, and returning the jury, taking the inquiry, the attendance of witnesses, the employment of counsel and attorneys, recording the verdict and judgment thereon, and otherwise incident to such inquiry.

See also the L. C. (Taxation of Costs) Act, 1895, *infra*, p. 369.

Section applies only where verdict exceeds

The words "such inquiry" in this section refer to the inquiry spoken of in the earlier part of sect. 51, namely, where the landowner recovers more than the sum offered by the company. Where, therefore, he recovers less, or an

equal sum, the company is entitled only to one-half of the formal costs of the inquiry, and not also to one-half the costs of witnesses and counsel (*Bray v. S. E. Ry. Co.*, 1849, 7 D. & L. 307). Section 52.
sum
offered.

Expenses preliminary to the trial and the fees of surveyors not called as witnesses are not allowed (see *Reg. v. Sheriff of Warwickshire*, 1841, 2 Ry. Cas. 661; *R. v. J.J. of York*, 1834, 1 A. & E. 828). Expenses
outside
trial not
allowed.

Where a verdict is removed by *certiorari* and quashed on the ground that the under-sheriff had misdirected the jury, and a further inquiry is held under the same warrant and compensation awarded, the claimants, if entitled to costs, have the costs of the abortive inquiry as well as the costs of the second inquiry (*Reg. v. N. London Ry. Co.*, 1881, 51 L. J. Q. B. 241; *sub nom. Reg. v. Manley Smith*, 30 W. R. 272). Costs of
abortive
inquiry.

The Court has no jurisdiction over the taxation on a motion to review, but apparently it can interfere by *certiorari* or *mandamus* where the master has improperly allowed or disallowed costs (*Owen v. L. & N. W. Ry. Co.*, 1867, L. R. 3 Q. B. 54, approved in *Sandback Charity Trustees v. N. Staff. Ry. Co.*, 1877, 3 Q. B. D. 1; *Re Ross & York, &c. Ry. Co.*, 1849, 5 Ry. Cas. 516). Jurisdic-
tion of
Court over
taxation.

Payment and Recovery of Costs.

LIII. If any such costs shall be payable by the promoters of the undertaking, and if within seven days after demand such costs be not paid to the party entitled to receive the same, they shall be recoverable by distress, and on application to any justice he shall issue his warrant accordingly; and if any such costs shall be payable by the owner of the lands, or of any interest therein, the same may be deducted and retained by the promoters of the undertaking, out of any money awarded by the jury to such owner, or determined by the valuation of a surveyor under the provision hereinafter contained; and the payment or deposit of the remainder, if any, of such money shall be deemed payment and satisfaction of the whole Section 53.
Costs pay-
able by
promoters
recover-
able by
distress.
Costs pay-
able by
claimant
deducted
from com-
pensation.

Section 53. thereof, or if such costs shall exceed the amount of the money so awarded or determined, the excess shall be recoverable by distress, and on application to any justice he shall issue his warrant accordingly.

Costs also
recover-
able in
action.

The costs can also be recovered with the compensation in an action. (See *S. E. Ry. Co. v. Richardson*, 1855, 15 C. B. 810.)

Not by
mandamus.

Formerly it was thought that, in default of distress, a *mandamus* would issue to compel payment of costs (*Reg. v. London & Blackwall Ry. Co.*, 1845, 4 Ry. Cas. 119); but since they are recoverable by action it seems that *mandamus* is not available. (See *Reg. v. Hull & Selby Ry. Co.*, 1844, 6 Q. B. 70.)

Special Jury.

Section 54.

Notice for
and nomi-
nation of
special
jury.

LIV. If either party desire any such question of disputed compensation as aforesaid to be tried before a special jury, such question shall be so tried, provided that notice of such desire, if coming from the other party, be given to the promoters of the undertaking before they have issued their warrant to the sheriff; and for that purpose the promoters of the undertaking shall by their warrant to the sheriff require him to nominate a special jury for such trial; and thereupon the sheriff shall, as soon as conveniently may be after the receipt by him of such warrant, summon both the parties to appear before him by themselves or their attorneys, at some convenient time and place appointed by him, for the purpose of nominating a special jury (not being less than five nor more than eight days from the service of such summons); and at the place and time so appointed the sheriff shall proceed to nominate and strike a special jury, in the manner in which such juries shall be required by the laws for the time being in force to be nominated or struck by the proper officers of

the Superior Courts, and the sheriff shall appoint a day, not later than the eighth day after striking of such jury, for the parties or their agents to appear before him to reduce the number of such jury, and thereof shall give four days' notice to the parties; and on the day so appointed the sheriff shall proceed to reduce the said special jury to the number of twenty, in the manner used and accustomed by the proper officers of the Superior Courts.

Section 54.

The verdict will not be set aside on the ground that some of the jurymen were not qualified to act. The proper course is to challenge the persons objected to (*Re Chelsea W. W. Co.*, 1855, 10 Exch. 731).

Jurymen
not quali-
fied.

Deficiency of Special Jurymen.

LV. The special jury on such inquiry shall consist of twelve of the said twenty who shall first appear on the names being called over, the parties having their lawful challenges against any of the said jurymen; and if a full jury do not appear, or if after such challenges a full jury do not remain, then, upon the application of either party, the sheriff shall add to the list of such jury the names of any other disinterested persons qualified to act as special or common jurymen, who shall not have been previously struck off the aforesaid list, and who may then be attending the Court, or can speedily be procured, so as to complete such jury, all parties having their lawful challenges against such persons; and the sheriff shall proceed to the trial and adjudication of the matters in question by such jury; and such trial shall be attended in all respects with the like incidents and consequences, and the like penalties shall be

Section 55.

Defi-
ciency,
how to be
made up.

Section 55. applicable, as hereinbefore provided in the case of a trial by common jury.

Other Inquiries before same Special Jury by Consent.

Section 56. LVI. Any other inquiry than that for the trial of which such special jury may have been struck and reduced as aforesaid may be tried by such jury, provided the parties thereto respectively shall give their consent to such trial.

Attendance of Jurymen.

Section 57. LVII. No jurymen shall, without his consent, be summoned or required to attend any such proceeding as aforesaid more than once in any year.

Jurymen not to be summoned more than once a year.

(6.) WHERE THE OWNER IS ABSENT OR CANNOT BE FOUND.

§ 58. Purchase Money and Compensation to be determined by Valuation.

§ 59. Surveyor nominated by Two Justices.

§ 60. Declaration by Surveyor.

§ 61. Nomination, Declaration, and Valuation to be kept and produced to Owner.

§ 62. Costs of Valuation.

§ 63. Damage by Severance.

§ 64. Absent Owner to be entitled to have Amount ascertained by Arbitration.

§ 65. Question for Arbitrators.

§ 66. Payment or Deposit of further Sum awarded.

§ 67. Costs of Arbitration.

Purchase Money and Compensation to be determined by Valuation.

LVIII. The purchase money or compensation to be paid for any lands to be purchased or taken by the promoters of the undertaking from any party who, by reason of absence from the kingdom, is prevented from treating, or who cannot after diligent inquiry be found, or who shall not appear at the time appointed for the inquiry before the jury as hereinbefore provided for, after due notice thereof, and the compensation to be paid for any permanent injury to such lands, shall be such as shall be determined by the valuation of such able

Section 58.

Proceed-
ings where
owner is
(1) absent
from
kingdom ;
(2) cannot
be found ;
(3) does
not appear
before
jury.

Section 58. practical surveyor as two justices shall nominate for that purpose as hereinafter mentioned.

Surveyor must visit premises.

For the valuation to be good, the surveyor must actually visit the premises (*Cotter v. Met. Ry. Co.*, 1864, 4 N. R. 454).

Section wrongly used.

Where there are doubts as to which of several claimants is entitled, but none of the claimants are absent, the compensation must be determined in the presence of all the claimants under sect. 23. If the parties proceed under this section, the deposit paid into Court will not be paid out until the value has been determined in the proper manner (*Ex p. L. & S. W. Ry. Co.*, 1869, 38 L. J. Ch. 527).

Nomination of Surveyor by Two Justices.

Section 59.
Justices to nominate surveyor.

LIX. Upon application by the promoters of the undertaking to two justices, and upon such proof as shall be satisfactory to them that any such party is, by reason of absence from the kingdom, prevented from treating, or cannot after diligent inquiry be found, or that any such party failed to appear on such inquiry before a jury as aforesaid, after due notice to him for that purpose, such justices shall, by writing under their hands, nominate an able practical surveyor for determining such compensation as aforesaid, and such surveyor shall determine the same accordingly, and shall annex to his valuation a declaration in writing subscribed by him of the correctness thereof.

Description of lands to be valued.

The instrument appointing the surveyor need not specify the lands to be valued, nor the course of the undertaking in respect of which they are taken (*Poynder v. G. N. Ry. Co.*, 1847, 16 Sim. 3).

Declaration by Surveyor.

Section 60.
Surveyor to sign declaration.

LX. Before such surveyor shall enter upon the duty of making such valuation as aforesaid he shall, in the presence of such justices, or one of

them, make and subscribe the declaration following at the foot of such nomination, that is to say— Section 60.

“I, A. B., do solemnly and sincerely declare that I will faithfully, impartially, and honestly, according to the best of my skill and ability, execute the duty of making the valuation hereby referred to me. A. B.

“Made and subscribed in the presence of .”

And if any surveyor shall corruptly make such declaration, or having made such declaration shall wilfully act contrary thereto, he shall be guilty of a misdemeanour.

Nomination, Declaration, and Valuation of Surveyor to be kept and produced to Owner.

LXI. The said nomination and declaration shall be annexed to the valuation to be made by such surveyor, and shall be preserved together therewith by the promoters of the undertaking, and they shall at all times produce the said valuation and other documents, on demand, to the owner of the lands comprised in such valuation, and to all other parties interested therein. Section 61.
Custody of valuation.

Costs of Valuation.

LXII. All the expenses of and incident to every such valuation shall be borne by the promoters of the undertaking. Section 62.
Promoters pay costs of valuation.

Damage by Severance.

LXIII. In estimating the purchase money or compensation to be paid by the promoters of the undertaking, in any of the cases aforesaid, regard shall be had by the justices, arbitrators, or sur- Section 63.
In estimating compensation, re-

Section 63.

ward to be
paid to
(1) value
of lands
taken, and
(2) damage
by sever-
ing or
otherwise
injuriously
affecting
other
lands of
claimant.

Award
may lump
together
price and
damage.

Silence of
arbitrator
as to
severance
damage.

Award
of no
damage.

Land held
on pre-
carious
title.

veyors, as the case may be, not only to the value of the land to be purchased or taken by the promoters of the undertaking, but also to the damage, if any, to be sustained by the owner of the lands by reason of the severing of the lands taken from the other lands of such owner, or otherwise injuriously affecting such other lands by the exercise of the powers of this or the special Act, or any Act incorporated therewith.

For the meaning of the phrase "injuriously affecting," see sect. 68.

One sum may be awarded for the price of the land and for compensation for damage by severance or otherwise (*Re Bradshaw's Arbitration*, 1848, 12 Q. B. 562).

But if it is not clear that damage has been included, specific performance of the purchase will not be ordered (*Wakefield v. Llanelly Ry., &c. Co.*, 1865, 3 D. J. & S. 11).

The presumption is, however, that the sum awarded includes all damage properly recoverable, and hence an award is not bad for not expressly awarding compensation for loss by reason of the land having been untenanted between service of the notice to treat and completion (*Re Ware & Regent's Canal Co.*, 1854, 9 Ex. 395).

The silence of an arbitrator on the subject of compensation for damage done by severance where it has been claimed has been held to negative the claim, and not to invalidate the award (*Re Duke of Beaufort and Swansea Harbour Trustees*, 1860, 8 C. B. N. S. 146).

The arbitrators, if of opinion that there is no damage, may award the amount of compensation to be *nil* (*Bradby v. Southampton L. B.*, 1855, 4 E. & B. 1014; cf. *Reg. v. Lancaster & Preston, &c. Ry. Co.*, *supra*, p. 149).

Compensation may be given for severance notwithstanding that part of the land left, upon the possession of which the value of the entire unsevered lands depended, is held only under a verbal agreement determinable on notice (*Holt v. Gas Light & Coke Co.*, 1872, L. R. 7 Q. B. 728).

Although in general compensation is not assessed in respect of accommodation works, yet if agricultural land with a prospective value as building land is left without means of access, the damage by severance is to be esti-

mated as if all access were cut off without any regard to the power of justices to order accommodation works under sects. 68 and 69 of the Railways Clauses Act, 1845; as these works could only be ordered with reference to the land as then used for agricultural purposes, and would be useless as an access to building land (*Reg. v. Brown*, 1867, L. R. 2 Q. B. 630). Section 63.

The compensation should include all damage resulting in the past or in the future from injury already done (*Reg. v. Poulter*, 1887, 20 Q. B. D. 132, 138). In respect of future damage which could have been reasonably foreseen at the time of assessing the compensation, the claimant is not entitled to further compensation (*Croft v. L. & N. W. Ry. Co.*, 1863, 3 B. & S. 436). The award, however, does not preclude the subsequent recovery of compensation for damage which could not have been anticipated (*G. N. Ry. Co. v. Lawrence*, 1851, 16 Q. B. 643; *L. & Y. Ry. Co. v. Evans*, 1851, 15 Beav. 322; *Re Ware & Regent's Canal Co.*, 1854, 9 Ex. 395, 402; see *Darley Main Colliery Co. v. Mitchell*, 1886, 11 App. Cas. 127); though in the case of a constantly recurring injury the proper remedy may be by injunction and not by compensation under sect. 68 (*Keates v. Holycell Ry. Co.*, 1873, 28 L. T. 183). Future damage.

Where the company had power to stop up certain tramways leading to the claimant's iron works, it was held that the umpire might give compensation for damage contingent on this event (*Re Brogden & Llynvi Valley Ry. Co.*, 1860, 30 L. J. C. P. 61). Con-
tingent
damage.

*Absent Owner to be entitled to have Amount
ascertained by Arbitration.*

LXIV. When the compensation payable in respect of any lands, or any interest therein, shall have been ascertained by the valuation of a surveyor, and deposited in the Bank under the provisions herein contained, by reason that the owner of or party entitled to convey such lands or such interest therein as aforesaid could not be found or was absent from the kingdom, if such owner or party shall be dissatisfied with such valuation it shall be lawful for him, before he shall have applied to the Court of Chancery for payment or Section 64.

Where
owner not
found or
absent, he
may sub-
sequently
have value
deter-
mined by
arbitra-
tion.

Section 64. investment of the moneys so deposited under the provisions herein contained, by notice in writing to the promoters of the undertaking, to require the question of such compensation to be submitted to arbitration, and thereupon the same shall be so submitted accordingly, in the same manner as in other cases of disputed compensation hereinbefore authorized or required to be submitted to arbitration.

Question for Arbitrators.

Section 65. LXV. The question to be submitted to the arbitrators in the case last aforesaid shall be, whether the said sum so deposited as aforesaid by the promoters of the undertaking was a sufficient sum, or whether any and what further sum ought to be paid or deposited by them.

Arbitrators find sufficiency of deposit.

Section 66. *Payment or Deposit of further Sum awarded.*

LXVI. If the arbitrators shall award that a further sum ought to be paid or deposited by the promoters of the undertaking, they shall pay or deposit, as the case may require, such further sum within fourteen days after the making of such award, or in default thereof the same may be enforced by attachment, or recovered, with costs, by action or suit in any of the Superior Courts.

If further sum awarded, payment in fourteen days.

Costs.

Section 67. LXVII. If the arbitrators shall determine that the sum so deposited was sufficient, the costs of and incident to such arbitration, to be determined by the arbitrators, shall be in the discretion of the arbitrators; but if the arbitrators shall determine that a further sum ought to be paid or deposited by the promoters of the undertaking, all the costs of and incident to the arbitration shall be borne by the promoters of the undertaking.

Incidence of costs.

(7.) LANDS INJURIOUSLY AFFECTED.

Mode of ascertaining Compensation where Lands are taken or injuriously affected without Satisfaction having been made.

LXVIII. If any party shall be entitled to any compensation in respect of any lands, or of any interest therein, which shall have been taken for or injuriously affected by the execution of the works, and for which the promoters of the undertaking shall not have made satisfaction under the provisions of this or the special Act, or any Act incorporated therewith, and if the compensation claimed in such case shall exceed the sum of fifty pounds, such party may have the same settled either by arbitration or by the verdict of a jury, as he shall think fit; and if such party desire to have the same settled by arbitration, it shall be lawful for him to give notice in writing to the promoters of the undertaking of such his desire, stating in such notice the nature of the interest in such lands in respect of which he claims compensation, and the amount of the compensation so claimed therein; and unless the promoters of the undertaking be willing to pay the amount of compensation so claimed, and shall enter into a written agreement for that purpose within twenty-one days after the receipt of any such notice from any party so entitled, the same shall be settled by arbitration in the manner herein provided; or if the party so entitled as aforesaid desire to have such question of compensation settled by jury, it

Section 68.

Where claimant entitled to compensation for lands taken or injuriously affected, for which satisfaction not made under Acts, claim over 50%. to be settled by arbitration or jury at option of claimant. Notice for arbitration to state nature of interest and amount claimed, and promoters may agree to such amount

Section 68.

within
twenty-
one days,
or arbi-
tration
follows.

On notice
for jury,
promoters
to agree
within
twenty-
one days,
or issue
warrant to
sheriff. In
default
promoters
pay
amount
claimed.

This
section
probably
gives an
independ-
ent right
to com-
pensation.

shall be lawful for him to give notice in writing of such his desire to the promoters of the undertaking, stating such particulars as aforesaid, and unless the promoters of the undertaking be willing to pay the amount of compensation so claimed, and enter into a written agreement for that purpose, they shall, within twenty-one days after the receipt of such notice, issue their warrant to the sheriff to summon a jury for settling the same in the manner herein provided, and in default thereof they shall be liable to pay to the party so entitled as aforesaid the amount of compensation so claimed, and the same may be recovered by him, with costs, by action in any of the Superior Courts.

The section applies "if any party shall be entitled to any compensation," &c. Hence it has been doubted whether by itself it gives a right to compensation, or whether it merely provides the machinery for securing compensation the right to which arises elsewhere (*Reg. v. St. Luke's*, 1871, L. R. 6 Q. B. pp. 574, 575; 7 *ib.* p. 151). Probably the former is the correct view (see per Willes, J., in *M'Carthy v. Metrop. Board of Works*, 1872, 7 C. P. p. 516), but the exact point has not been decided. Other sections, however, of the L. C. A., such as sects. 22 & 23, clearly give the right to compensation, and if the entire L. C. A. is incorporated in the special Act the earlier sections are sufficient justification for a claim under sect. 68, and none the less because in respect of particular matters not embraced in the claim, an express right to compensation is given in the special Act (*Reg. v. St. Luke's, supra*). But if the special Act incorporates this Act with the exception of the clauses relating to "the purchase and taking of lands otherwise than by agreement," the entire block of sections from 16 to 68, inclusive, is excluded; consequently compensation cannot be given for injuriously affecting the land generally, but only in cases expressly provided for in the special Act (*Ferrar v. Commissioners of Sewers*, 1869, L. R. 4 Ex. 227; *Baker v. St. Marylebone Vestry*, 1876, 24 W. R. 848).

Special
provisions

For special provisions giving compensation for injuriously affecting lands, see the Railway Clauses Act, 1845, sects. 6,

16; the Waterworks Clauses Act, 1847, sects. 6, 12; and the Public Health Act, 1875, sect. 308. Section 68.

A tenant for life can obtain compensation under this section, not for himself only, but for those in remainder as well (*Stone v. Corp. of Yeoril*, 1876, 2 C. P. D. p. 117). as to injuriously affecting.
Tenant for life.

Compensation can be obtained under this section in the two cases, (1) where land has been taken for, or (2) has been injuriously affected by, the execution of the works. When compensation payable.

1. Compensation for lands taken.

Where land has been taken, the compensation under this section is in lieu of the compensation which is ordinarily ascertained and paid under the earlier sections of the Act before entry by the company. The provisions of the section apply to land which has been taken under sect. 85 (*Adams v. London & Blackwall Ry. Co.*, 1850, 2 Mac. & G. 118). Applies to land taken under sect. 85.

For the purpose of this section the taking must be actual, or, if the company do not enter, they must at least obtain control of the premises:— Taking must be actual.

Actual entry and possession is necessary for lands to be “taken” within sect. 68 (*Church v. London School Board*, 1892, 8 T. L. R. 310; *Burkinshaw v. Birmingham, &c. Ry. Co.*, 1850, 6 Ry. Cas. 600).

A leaseholder let to a tenant from year to year, who received compensation from a company for his interest, and gave to the company the key of the premises, the company indemnifying him against future rent. The company did not actually enter. The premises were held to have “been taken” under this section (*Barker v. Met. Ry. Co.*, 1864, 5 N. R. 13). Delivery of key.

A tenant whose interest does not exceed a yearly tenancy must, upon his land being taken, have recourse to sect. 121, and cannot obtain compensation under this section (*Reg. v. M. S. & L. Ry. Co.*, 1854, 4 E. & B. 88). But if none of his land is taken he can proceed under this section for injuriously affecting (*Reg. v. Sheriff of Middlesex*, 1862, 31 L. J. Q. B. 261; *infra*, p. 317). Yearly tenant must proceed under sect. 121.

For a case where it was disputed whether the award was in respect of the purchase of land, or of compensation for injury only, see *Re Belfast Central Ry. Co., Ex p. Macrory*, 1871, 19 W. R. 238.

Section 68.

2. Compensation for injuriously affecting.

Compensation for injuriously affecting, though no land of claimant taken.

Compensation for "injuriously affecting" can be obtained under sect. 68, although no land of the claimant is actually taken (*Hammersmith, &c. Ry. Co. v. Brand*, 1869, L. R. 4 H. L. p. 217; *Metrop. Board of Works v. McCarthy*, 1874, L. R. 7 H. L. 243; *Glover v. N. Staff. Ry. Co.*, 1851, 16 Q. B. 912. See *Reg. v. Eastern Counties Ry. Co.*, 1841, 2 Q. B. 347).

Claim need not be satisfied before works proceeded with.

Where there is a claim for "injuriously affecting" land, the company are not bound to pay or secure the amount of the claim before proceeding with their works (*Hutton v. L. & S. W. Ry. Co.*, 1849, 7 Hare, 259). Hence the company will not be restrained from proceeding with their works till they have complied with the provisions of sect. 85 of this Act (*Macey v. Metrop. B. W.*, 1864, 33 L. J. Ch. 377; *Temple Pier Co. v. Metrop. B. W.*, 1865, 34 L. J. Ch. 262).

Approval of plans by public bodies.

Where it is provided in the special Act that the plans shall be approved by a public body, so far as the undertaking affects their rights or property, such approval does not deprive them of their rights under this section (*Thames Conservators v. Victoria, &c. Ry. Co.*, 1868, L. R. 4 C. P. 59; *Metrop. Board of Works v. Met. Ry. Co.*, 1868, L. R. 3 C. P. p. 629).

Conditions for compensation.

Compensation for injuriously affecting is given only when the following conditions are satisfied:—

- I. The injury must be due to the execution of the works, as distinguished from their subsequent user.
- II. The injury must be such as would, but for the statute authorizing the works, be actionable.
- III. There must be an infringement of a right incident to land.
- IV. The damage must be due to actual interference with the land or some right therein.

I. *The injury must be due to the execution of the works, as distinguished from their subsequent use* (*Caledonian Ry. Co. v. Walker's Trustees*, 1882, 7 App. Cas. per Lord Selborne, L. C. at p. 275; *Hopkins v. G. N. Ry. Co.*, 1877, 2 Q. B. D. 224).

Injury by user of railway no

In *Hammersmith, &c. Ry. Co. v. Brand* (1869, L. R. 4 H. L. 171), the view was strongly expressed by Lord

Cairns that the phrases "execution of the works" in this section, and "construction of the railway" in sect. 6 of the Rys. C. A., 1845, were used by the legislature with a view to the operations of the railway as a going concern, so as to entitle a neighbouring landowner to compensation for damage due to the user of the railway as well as to the making of it; but the contrary opinion prevailed, and it was settled that compensation could not be given for vibration due to the passing of trains when the railway was working, notwithstanding that the value of the property was actually depreciated thereby. *L. & N. W. Ry. Co. v. Bradley* (1851, 3 Mac. & G. 336) on this point is overruled. Similarly statutory compensation cannot be claimed by reason of the noise and smoke from trains, though an action would lie if the emission of smoke was forbidden by statute (*City of Glasgow Union Ry. Co. v. Hunter*, 1870, L. R. 2 Sc. 78, 85).

Section 68.
ground for
compen-
sation.

Where land is taken under the L. C. A., and applied to any use authorized by the statute, the mere use of the land, as distinguished from the construction of works upon it, cannot give rise to a claim for compensation (per Lord Halsbury, L. C., in *Corper Essex v. Acton Local Board*, 1889, 14 App. Cas. p. 161; per Lindley, L. J., in *A.-G. v. Met. Ry. Co.*, 1894, 1 Q. B. 384, p. 392).

A railway company, which had constructed an underground railway, and had made a ventilating aperture in land purchased by them and lying at the back of a house, enlarged the aperture for the purpose of securing better ventilation. The result was to increase the quantity of smoke coming to the house, and the house depreciated in value. It was held that since the damage arose from the working and not from the construction of the railway, no compensation was recoverable (*A.-G. v. Met. Ry. Co.*, 1894, 1 Q. B. 384).

Compensation may be given for injury occasioned in the course of the construction of the works, and need not be confined to injury remaining when the work is finished, notwithstanding the opposite opinion of Lord Chelmsford in *Ricket v. Met. Ry. Co.* (L. R. 2 H. L. p. 194), (*Ford v. Met., &c. Ry. Cos.*, 1886, 17 Q. B. D. 12).

Compen-
sation for
temporary
injury.

And not only is no compensation payable for damage caused by the use of the railway, but the right of action is taken away as well:—

Right of
action
taken
away.

When the legislature has sanctioned and authorized the

Section 68. use of a particular thing, and it is used for the purpose for which it was authorized, and every precaution has been observed to prevent injury, the sanction of the legislature carries with it this consequence, that if damage results from the use of such thing independently of negligence, the party using it is not responsible (*Vaughan v. Taff Vale Ry. Co.*, 1860, 5 H. & N. p. 685, per Cockburn, C. J.; *Hammersmith Ry. Co. v. Brand*, 1869, L. R. 4 H. L. 171, 201; *Emsley v. N. E. Ry. Co.*, 1896, 1 Ch. p. 429; *R. v. Pease*, 1832, 4 B. & Ad. 30; see *L. B. & S. C. Ry. Co. v. Truman*, 1885, 11 App. Cas. 45, where it was held that a company, in fact acting without negligence, were not bound to choose a site for proposed works in such a manner as not to cause a nuisance to adjoining occupiers).

As owners of the land the company can make any use of it they please for the purpose of the railway, so long as they do not infringe the rights of other people; and those rights are not infringed by the use of the railway which the company are authorized to construct and work, unless there is negligence in such use (per Lindley, L. J., in *A.-G. v. Met. Ry. Co.*, 1894, 1 Q. B. p. 388).

And *a fortiori* the right of action is excluded when the injury arises from the execution of the works so that compensation is payable (see *Ferrar v. Comm. of Sewers*, 1868, L. R. 4 Ex. p. 7).

Excess of
statutory
powers, or
negligence
in their
exercise.

But as well in the execution of the works as in their subsequent user, the exemption from liability to an action depends on the proper exercise of the statutory powers, and damages are recoverable for acts done in excess of such powers or in their negligent exercise:—

Excess of
powers.

Sect. 68 applies only to things done under statutory powers; for anything else the common law remedy is properly applicable, or an injunction can be obtained (*Imperial Gas Light, &c. Co. v. Broadbent*, 1859, 7 H. L. C. 600, see p. 612; see *Reg. v. Darlington L. B.*, 1865, 35 L. J. Q. B. 45; *Coe v. Wise*, 1866, L. R. 1 Q. B. 711; *Clowes v. Staff. Potteries W. W. Co.*, 1872, 8 Ch. 125).

The statutory tribunal is only established to give compensation for losses sustained in consequence of what the railway company may do lawfully under the powers which the legislature has conferred upon them; for anything done in excess of those powers the ordinary remedy remains (*Caledonian Ry. Co. v. Colt*, 1860, 13 Macq. p. 838, per Lord Campbell, C.), and compensation is not

payable under the L. C. A. (*Cator v. Lewisham Board of Works*, 1864, 5 B. & S. 115). Section 68.

In case of an excess of statutory powers, where no injury has been occasioned to any individual, and none such is imminent or of irreparable consequence, the Attorney-General alone can obtain an injunction (*Ware v. Regent's Canal Co.*, 1858, 3 De G. & J. 212). Excess of statutory powers, but no injury.

Where the damage arises in consequence of the negligent execution of works authorized by statute, the remedy is by action (*Brine v. G. W. Ry. Co.*, 1862, 31 L. J. Q. B. 101; *Clothier v. Webster*, 1862, 31 L. J. C. P. 316). Negligence in exercise of powers.

A person whose land has not been taken cannot recover compensation in respect of annoyance caused, *without negligence*, by the passing of trains after the railway is brought into use (*Hammersmith, &c. Ry. Co. v. Brand*, 1869, L. R. 4 H. L. 171).

The circumstance that the company are liable to pay compensation does not give them a free hand with respect to the property of private individuals; and if there are two ways of executing a work—as the construction of a tunnel—they must adopt that way which will do the least possible injury to the neighbouring property (*Freehold, &c. Investment Co. v. Metrop. Dist. Ry. Co.*, 1866, 14 L. T. 96). A company must exercise its statutory rights with moderation and discretion and with a reasonable regard for the rights of other persons. When the company can construct its works without injury to private rights, it is in general bound to do so (*Biscoe v. G. E. Ry. Co.*, 1873, 16 Eq. 636; see per Wickens, V.-C., at pp. 640, 641). Method of least inconvenience to be adopted.

II. *Compensation is recoverable under this section only in cases where, if the works had not been authorized by statute, the injury would have given a cause of action.*

This test is now well settled (see per Lord Hatherley, L. C., in *City of Glasgow Union Ry. Co. v. Hunter*, 1870, L. R., 2 Sc. p. 79, and Lord Cairns, L. C., in *Metrop. Board of Works v. McCarthy*, 1874, L. R. 7 H. L. p. 252; and see *Rhodes v. Airedale Drainage Commissioners*, 1876, 1 C. P. D. 402); though in *Ricket v. Met. Ry. Co.* (1867, L. R. 2 H. L. 175), Lord Westbury sought to place statutory compensation on a broader basis. Injury must be such as to furnish ground of action.

The test of whether a person's rights have been injuriously affected within the meaning of this Act is

Section 68. whether, if the parties were private owners, an action would be maintainable for what had been done (per Brett, M. R., in *Mayor of Birkenhead v. L. & N. W. Ry. Co.*, 1885, 15 Q. B. D. p. 578).

Annoy-
ance not
amount-
ing to
actionable
nuisance.

Where works are being executed under statutory power, and in a manner permitted by the power, a merely temporary annoyance caused to the owner of adjoining property does not amount to a nuisance at law. An authority to execute certain works—as to sink a shaft—includes all things reasonably necessary for the execution of the works, and gives the company the same rights as a private individual would have under the circumstances (*Harrison v. Southwark & Vauxhall Water Co.*, 1891, 2 Ch. 409).

The following cases illustrate the rule:—

Over-
looking
premises.

No compensation can be claimed for deterioration in value of property in consequence of its being overlooked by persons standing on the railway and station platform (*Penny v. S. E. Ry. Co.*, 7 E. & B. 660).

Interrup-
tion of
subter-
anean
water.

No compensation can be given for interception of water percolating underground not in a defined channel, since, apart from the statute no action would lie for such interception (*New River Co. v. Johnson*, 1860, 2 E. & E. 435).

Right
must be
proved.
Sewers.

It follows that when interference with a right is alleged, the existence of the right must be proved. Thus a railway company were held not liable to pay compensation for damage caused by the bursting of a sewer in consequence of the excavation of the railway close to it, the owners of the sewer not having acquired any right to lateral support (*Metrop. Board of Works v. Met. Ry. Co.*, 1869, L. R. 4 C. P. 192; see *Roderick v. Aston L. B.*, 1877, 5 C. D. p. 332). On the other hand a sewer constructed under the Public Health Act, 1875, is entitled to subjacent support, and the landowner through whose land it runs has a right to immediate compensation for being deprived of free power to work subjacent mines; but not for the risk of the percolation of sewage into the subjacent mines (*Re Corp. of Dudley*, 1881, 8 Q. B. D. 86).

*Interesse
termini.*

An *interesse termini* is a proprietary right in respect of which compensation can be granted (see *Gillard v. Cheshire Lines Committee*, 1884, 32 W. R. 943).

Lessees
with
option to
determine
lease.

Where lessees for a term with a right to determine the lease on giving six months' notice are threatened with injury from the works of a railway company and give

notice to determine the lease, they cannot claim compensation on the footing of a 14 years' term (*Reg. v. Poulter*, 1887, 20 Q. B. D. 132). Section 68.

Where compensation is given for an invalid lease, the lessee will be entitled to so much of the amount as represents improvements effected by him on the faith of the leases being valid (*Ex p. Cooper*, 1864, 34 L. J. Ch. 373). Improvements under invalid lease.

III. *Compensation can be obtained under this section only where the right infringed is a right incident to the land.*

When a right of action, which would have existed if the work in respect of which compensation is claimed had not been authorized by Parliament, would have been merely personal, without reference to land or its incidents, compensation is not due under this Act (per Lord Selborne, L. C., in *Caledonian Ry. Co. v. Walker's Trustees*, 1882, 7 App. Cas. p. 275). Injury must be to right incident to land.

The right to compensation is strictly confined to interest in lands injuriously affected (*Hammersmith, &c. Ry. Co. v. Brand*, 1869, L. R. 4 H. L. p. 197; see *Caledonian Ry. Co. v. Ogilvy*, 1856, 2 Macq. 229; *Ricket v. Met. Ry. Co.*, 1867, L. R. 2 H. L. 175); though where there is structural damage to a building, compensation can be given also for damage to the occupier's goods therein (*Knock v. Metrop. Ry. Co.*, 1868, L. R. 4 C. P. 131).

The principle of the decision of the House of Lords in *Ricket v. Met. Ry. Co.* (*supra*) is that, in order to entitle a claimant to compensation under sect. 68, the injury must be done to land or some interest in land, and a mere personal injury, though connected with the enjoyment of particular land, is not ground for compensation. Hence, where the occupier of premises near the Thames had been accustomed to draw water from the river, and to bring barges to a dry dock, as public rights, and not as rights attached to the premises, and was obstructed in the enjoyment of these rights by the construction of an embankment under statutory powers, it was held that he had no claim to compensation (*Reg. v. Metrop. B. W.*, 1869, L. R. 4 Q. B. 358).

The claim for compensation must be in respect of an

Section 68. interest in land: hence it cannot arise for the removal of chattels such as water-pipes (*New River Co. v. Midland Ry. Co.*, 1877, 36 L. T. 539).

In order to found a claim under this section for an interest in land injuriously affected, there must be an injury and damage not temporary, but permanent, peculiarly affecting the house or land itself in which the person claiming compensation has an interest. A mere personal inconvenience, obstruction, or damage to a man's trade or the goodwill of his business will not be sufficient, although any one of them might, but for the Act which authorises the doing of the thing occasioning the injury, have been the subject of an action against the person occasioning it (*Metrop. Board of Works v. McCarthy*, 1874, L. R. 7 H. L. 243, p. 256); though as to temporary damage during the construction of the works this is not correct (*Ford v. Met., &c. Ry. Cos.*, 1887, 17 Q. B. D. 12).

As to accommodation works in respect of use and enjoyment of land for personal purposes, see *Falls v. Belfast Ry. Co.*, 1849, 12 Ir. L. R. 233, stated *infra*, p. 288.

No compensation for loss of trade profits.

Upon this principle it has been held in numerous cases that no compensation can be given for the loss of trade profits due to alteration in the character of the neighbourhood brought about by the execution of the works of the company; though compensation is given when the diversion of traffic diminishes the value of the premises for all purposes. The latter case is treated as an interference with the premises themselves (*infra*, p. 175).

Loss of trade or custom, by reason of a work not otherwise directly affecting the house or land in or upon which a trade has been carried on, or any right properly incident thereto, is not by itself a proper subject for compensation (per Lord Selborne, L. C., in *Caledonian Ry. Co. v. Walker's Trustees*, 1882, 7 App. Cas. p. 275).

In assessing compensation for damages resulting from interference with a cellar consequent on the lowering of a roadway, the claimant was held not to be entitled to compensation for the indirect injury to his trade, resulting from diversion of traffic, but only for direct structural injury (*Bigg v. Corp. of London*, 1873, 15 Eq. 376).

A dock company, acting under its statutory powers, pulled down a number of houses, and made a cut which intercepted several thoroughfares, and obliged those who had formerly used them to take circuitous routes. The

tenants of a neighbouring public-house demanded compensation for loss of business owing to the decreased resort of persons to the house and for diminution in the value of the premises as a public-house. It was held that since the inconvenience was the necessary consequence of the lawful act of the company and was common to all persons in the neighbourhood, there was no claim for compensation (*R. v. London Dock Co.*, 1836, 5 A. & E. 163; *Reg. v. Vaughan*, 1868, L. R. 4 Q. B. 190; *supra*, p. 116).

Section 68.

Loss of custom caused by the temporary obstruction of a highway during the execution of the works is not a subject for compensation (*Ricket v. Met. Ry. Co.*, 1867, L. R. 2 H. L. 175, overruling *Senior v. Met. Ry. Co.*, 1863, 2 H. & C. 258).

IV. *The damage must be due to actual interference with the land or some right therein.*

"The test which appears to explain and reconcile the cases upon the words 'injuriously affected' is this, that where by the construction of the works there is a physical interference with any right, public or private, of which the owners or occupiers of property are by law entitled to make use in connection with such property, and which gives an additional market value to such property apart from the uses to which any particular owner or occupier might put it, there is a title to compensation if by reason of such interference the property as a property is lessened in value" (*Metrop. Board of Works v. McCarthy*, 1874, L. R. 7 H. L. p. 253; and see *Ricket v. Met. Ry. Co.*, 1867, L. R. 2 H. L. 175; *Reg. v. Metrop. Board of Works*, 1869, L. R. 4 Q. B. 358).

Injury must result from physical interference with right.

No case comes within the purview of the statute unless where some damage has been occasioned to the land itself in respect of which, but for the statute, the complaining party might have maintained an action. The injury must be actual injury to the land itself, as by loosening the foundations of buildings upon it, or obstructing its lights or its drains, or by making it inaccessible by the lowering or raising of the ground immediately in front, or by some such physical deterioration (*Ricket v. Met. Ry. Co.*, 1867, L. R. 2 H. L. p. 198), even though by reason of the execution of the works the property has been enhanced in

Section 68. value (*Eagle v. Charing Cross Ry. Co.*, 1867, L. R. 2 C. P. 638; but the principle of betterment is recognized in the Light Railways Act, 1896, s. 13).

Occasional flooding of lands. An occasional flooding of lands caused by a proper execution of statutory powers is within this section, and is a subject of compensation (*Ware v. Regent's Canal Co.*, 1858, 3 De G. & J. 212).

Permanent obstruction of access. Permanent obstruction of access to premises is such an interference as to be a subject for compensation:—

The obstruction by the execution of the work of a man's direct access to his house or land, whether such access be by a public road or by a private way, is a proper subject for compensation (per Lord Selborne, L. C., in *Cal. Ry. Co. v. Walker's Trustees*, 1882, 7 App. Cas. p. 275; *Chamberlain v. West End, &c. Ry. Co.*, 1862, 2 B. & S. 605; *Tuohey v. Gt. S. & W. Ry.*, 1859, 10 Ir. C. L. R. 98).

Compensation may be obtained in respect of raising the level of a street and so impeding access to a house of which the claimant is lessee (*Reg. v. St. Luke's*, 1871, L. R. 7 Q. B. 148; see *Moore v. Gt. S. & W. Ry. Co.*, 1858, 10 Ir. C. L. R. 46).

But compensation cannot be recovered for the erection of a hoarding which obstructs the access to premises, and for a short time renders the use of the premises for trade purposes less convenient (*Herring v. Metrop. B. W.*, 1865, 34 L. J. M. C. 224).

Access from sea or tidal river. The same rule holds with regard to a right of access between premises and the sea or a tidal river:—

The right of navigating a tidal river is common to all subjects, but it may be connected with a right to exclusive access to particular land on the bank of the river, and the invasion of the latter is a ground for damages, and therefore for compensation (*Lyon v. Fishmongers' Co.*, 1876, 1 App. Cas. 662). And similarly with regard to the right of access to the sea (*A.-G. of Straits Settlement v. Wemyss*, 1888, 13 A. C. 192, p. 196).

River frontage. A landowner part of whose land is taken, such part forming the whole river frontage of his property, the river being navigable, is entitled in respect of the land not taken to compensation for deterioration in value by reason of deprivation of the means of access to the river (*Duke of Buccleuch v. Metrop. B. W.*, 1872, L. R. 5 H. L. 418).

A landowner whose land abuts on the seashore, and whose access to the sea is cut off by a railway company, is

entitled to compensation, though no part of his land is taken (*Reg. v. Rynd*, 1863, 16 Ir. C. L. R. 29). Section 68.

And compensation may also be given for interference with the convenience of access. Thus the road in front of the premises, which had formerly been fifty feet wide, had been narrowed by means of an embankment made by a company upon a portion of it to thirty-three feet. It was stated that the light to the lower room of the house had been thereby sensibly diminished, and that the narrowing of the road was a great discomfort and occasioned inconvenience by reason of carriages being compelled to go some distance beyond the gate before they could turn. An auctioneer and surveyor, who knew the premises well, and who had acted for the sellers when the plaintiff bought the property, stated that he considered that the house was seriously damaged for occupation purposes by the embankment, and consequently depreciated in value by such embankment, and also by the narrowing of the road. The owner was held to be entitled to compensation (*Beckett v. Midland Ry. Co.*, 1867, L. R. 3 C. P. 82). Interference with convenience of access.

Where a public authority have constructed a sewer, but no right of access is expressly vested in them, the right being only implied from their local Act, the right of access to be implied is not any particular mode of access, but such only as is reasonably necessary to enable the repairs to the sewer to be done; hence, if by the works of a railway company the access is only made less easy and convenient but is not altogether prevented, no claim for compensation arises (*Mayor of Birkenhead v. L. & N. W. Ry. Co.*, 1885, 15 Q. B. D. 572). Contra, where no definite right of access.

Diversion of traffic is a ground for compensation if the premises are thereby depreciated in value for all purposes (*Metrop. Board of Works v. McCarthy*, 1874, L. R. 7 H. L. 243, where a dock which gave value to premises near a river was permanently stopped up by the execution of the works). Where diversion of traffic depreciates premises for all purposes.

The Metropolitan Board of Works built a new bridge across the River Thames and made a new road leading to this new bridge; the old bridge, a short distance further down the river, was closed, and the houses on the road which led to the old bridge were deprived of the benefit of the traffic. It was held by the House of Lords that the value of the houses might be thereby diminished for all purposes, and that a jury had jurisdiction to award com-

Section 68. compensation (*Metrop. Board of Works v. Howard*, 1889, 5 T. L. R. 732).

Or for
special
purposes.

Or, if the premises are depreciated with reference to the special purpose to which they are being put:—

Compensation can be obtained in respect of depreciation in the special value attaching to premises in respect of their use as an hotel and public-house, consequent upon stopping up the street in which they are situated (*Wadham v. N. E. Ry. Co.*, 1884, 14 Q. B. D. 747; see 16 *ib.* 227).

Relaxa-
tion of
rules
where
some land
of claimant
is taken.

The above rules are not strictly applied in cases where land of the claimant has been actually taken, and compensation may then be given for injury to land not taken, although such injury is due to the user of the railway, and although it would not be actionable; but this relaxation is subject to the qualification that the injury must result from the user of the land taken. "As no part of the claimant's property," said Lord Chelmsford in *City of Glasgow Union Ry. Co. v. Hunter* (1870, L. R. 2 H. L. Sc. p. 83), "has been injured by anything done on his land over which the railway runs, his right to compensation for damage appears to me to be precisely the same as if none of his land had been taken by the company."

Where a part of his land has been taken from a landowner under this Act, he is entitled to compensation for deterioration in the value of the land occasioned by smoke and vibration caused by passing trains, or loss of privacy and increase of dust and noise occasioned by the construction of an embankment and public road adjoining to and formed upon part of a garden (*Duke of Buccleuch v. Metrop. B. W.*, 1872, L. R. 5 H. L. 418).

In a case where a cotton mill, situate near land taken from the same owner, became exposed to risk of fire from the passage of engines along the part of land taken, and consequently the mill could not be insured except at an increased premium, and was rendered of less saleable value, the owner was held to be entitled to compensation under this section (*Re Stockport, &c. Ry. Co.*, 33 L. J. Q. B. 251; *S. C.*, *Reg. v. Clerk of the Peace of Cheshire*, 1864, 4 N. R. 167).

Where part of a proprietor's land is taken from him, and the future use of the part so taken may damage the remainder of his land, then such damage may be an injurious affecting of the proprietor's other lands, though

it would not be an injurious affecting of the land of neighbouring proprietors from whom nothing had been taken for the purpose of the intended works (per Lord Halsbury, L. C., in *Cowper Essex v. Acton Local Board*, 1889, 14 App. Cas. p. 161). Section 68.

For the above rule to apply, it is not necessary that the lands taken should be contiguous to the lands said to be injuriously affected. Where several pieces of land, owned by the same person, are so near to each other, and so situated, that the possession and control of each gives an enhanced value to all of them, they are lands held together within the meaning of the Act (S. C., per Lord Herschell, p. 167).

Land on which houses had been erected was adjacent to land taken by a school board for the erection of a school, both pieces of land being in the same ownership. The owner, on going before the jury to assess compensation for the land taken, claimed also for damages for depreciation of the houses owing to the noise that would be caused at the school, and the jury assessed 1,000*l.* as the damages under this head. The Court refused to quash the verdict on *certiorari* (*Reg. v. Pearce; Ex p. London School Board*, 1898, 78 L. T. 681).

The same principle has been applied, by analogy, to a case where a railway company obstructed windows of a new building partly replacing and partly extending beyond the windows of the previous building. The old windows had a right of light attached to them, but no fresh extended right had been acquired for the new windows. It was held that the owners were entitled to compensation in respect of the whole of the new windows (*Re London T. & S. Ry. Co. & Trustees of Gower Walk Schools*, 1889, 24 Q. B. D. 326). Obstruction of light.

Compensation for interference with incorporeal rights.

Where the landowner is under a covenant not to assign, the taking of his land by a railway company, whether compulsorily or by agreement, releases him from liability on the covenant (*Baily v. De Crespigny*, 1869, L. R. 4 Q. B. 180, *supra*, p. 106). And it is the same in the case of a covenant restricting the user of the land. Nor does an action lie against the company. The proper remedy for the covenantee is to claim compensation under this section, Covenants affecting land taken.

Section 68. whether the land is taken compulsorily or by agreement (*Kirby v. Harrogate School Board*, 1896, 1 Ch. 437). Similarly, where the company upon acquiring the reversion of premises subject to a lease would come under the liability of a covenant for quiet enjoyment, no action will lie against them for any breach committed in the reasonable and careful exercise of their statutory powers, and the lessee should proceed under this section (*M. S. & L. Ry. Co. v. Anderson*, 1898, 2 Ch. 394).

Easement. Where in pursuance of statutory powers the company interfere with an easement over land taken, the person entitled to the easement can obtain compensation under sect. 68 (*Wigram v. Fryer*, 1887, 36 C. D. 87; *Ford v. Metrop. &c. Ry. Cos.*, 1886, 17 Q. B. D. 12), and the promoters will not be restrained by injunction from interfering with the easement (*Duke of Bedford v. Dawson*, 1875, 20 Eq. 353; *French v. London T. & S. Ry. Co.*, 1886, 2 T. L. R. 395). As to inchoate rights, see *Barlow v. Ross*, 1890, 38 W. R. 372.

Although the special Act extends the word "land" in this Act to include any right over land, the promoters need not give notice to treat to the owners of easements over the land taken, but compensation is recoverable under this section as for land injuriously affected (*Clark v. London School Board*, 1874, 9 Ch. 120).

Right of shooting. Apparently a person entitled to a right of shooting over land through which a railway is carried has no claim to compensation, unless the landlord has bound himself not to interfere with the game (*Bird v. G. E. Ry. Co.*, 1865, 19 C. B. N. S. 268).

Ferry. Compensation may be claimed for obstructing a ferry appurtenant to land (*Reg. v. G. N. Ry. Co.*, 1849, 14 Q. B. 25), provided the obstruction is due to the execution of the works and is such that an action could have been maintained for it (*Hopkins v. G. N. Ry. Co.*, 1877, 2 Q. B. D. 224, overruling *Reg. v. Cambrian Ry. Co.*, 1871, L. R. 6 Q. B. 422). In *Hopkins v. G. N. Ry. Co.*, a railway company constructed across a river a railway bridge and a foot bridge, the latter being used by persons going to the railway station and also to other places. The bridges were about half a mile above an ancient ferry. The traffic across the ferry fell off, and the ferry was given up. It was held that the above two conditions were not satisfied, and that no compensation was payable.

Compensation will be given to a riparian owner, where the flow of water in a stream is diminished (*Mortimer v. S. Wales Ry. Co.*, 1859, 1 E. & E. 375); or to a mill-owner where by interfering with a weir the value of the mill is lessened (*R. v. Nottingham Old W. W. Co.*, 1837, 6 A. & E. 355); but not if the claimant has no interest other than that of the public generally (*R. v. Bristol Dock Co.*, 1810, 1 East, 429).

Section 68.
Flow of
water.

But the procedure under the section is restricted to cases of diminution of the flow of water; where a stream is diverted, the company must either give notice to treat or proceed under sect. 85 (*Bush v. Trowbridge Waterworks Co.*, 1875, 19 Eq. 291, 10 Ch. 459; *Ferrand v. Corp. of Bradford*, 1856, 21 Beav. 412); and the compensation will include the resulting depreciation in the value of the property affected (*Stone v. Corp. of Yeovil*, 1876, 2 C. P. D. 99). A river may be injuriously affected by the diversion of a stream flowing into it (see *Ferrand v. Corp. of Bradford*).

Where a conveyance of land passes a right of way over intended streets shown by reference to a plan, and a railway company subsequently raises the level of one of the streets and cuts off access thereto, the owner of the land conveyed is entitled to compensation under this section (*Furness Ry. Co. v. Cumberland Building Society*, 1884, 52 L. T. 144).

Right of
way.

Where a building plot was sold with the right to use roads shown on a plan "so far only as the same may be opened and not altered in virtue of the reserved power after mentioned," and the reserved power gave the vendor full liberty to vary and alter the plans; and a railway company took land running through the estate and diminished the accommodation for carriage traffic; it was held that the purchaser had no right to compensation in respect of an intended road not actually opened at the date of the notice to treat, though it would have been otherwise had the vendor been under an obligation to make the road in any event (*Fleming v. Newport Ry. Co.*, 1883, 8 App. Cas. 265).

Roads
varied
under
reserved
power.

Where the company by the execution of the works obstruct a public highway, a landowner cannot obtain compensation unless he suffers some inconvenience other than that suffered by the public generally; and the inconvenience must be the direct result of the obstruction, so that, apart from the fact of the works being executed under statutory powers, he could have brought an action (see judgment of

Obstruc-
tion of
highway.

Section 68. Lord Chelmsford, L. C., in *Ricket v. Met. Ry. Co.*, L. R. 2 H. L. 175). Hence in the absence of special injury a landowner has no claim to compensation in respect of the obstruction of a highway by a level crossing (*Caledonian Ry. Co. v. Ogilvy*, 1856, 2 Macq. 229, 235; see *Metrop. Board of Works v. McCarthy*, 1874, L. R. 7 H. L. p. 257), though otherwise, if a private right of way is affected (*Glover v. N. Staff. Ry. Co.*, 1851, 16 Q. B. 912).

Private
injury.

Where the owner of property sustains a private and particular injury by the stoppage of a road, as distinguished from the inconvenience caused to the public generally, compensation will be given (*Wood v. Stourbridge Ry. Co.*, 1864, 16 C. B. N. S. 222; see *Beckett v. Mid. R. Co.*, 1867, L. R. 3 C. P. 82).

When the private right of the owner of a house adjoining a highway to access to his house is interfered with by an unreasonable user of the highway, he is entitled to recover from the wrongdoer damages in respect of loss of custom in a business which he carries on in the house (*Fritz v. Hobson*, 1880, 14 C. D. 542).

Procedure.

Procedure
under
sect. 68.

When it is intended to make a claim under this section, the landowner must give notice in writing to the promoters, stating the nature of his interest in the lands in respect of which he claims compensation, and the amount of the compensation claimed. He must also state in the notice whether he desires to have the amount settled by arbitration or a jury.

For cases on the form of the notice, see *supra*, p. 109.

In general the earlier sections, including sect. 51 which makes the costs depend upon the amount offered by the promoters, are incorporated with this section (*Hayward v. Met. Ry. Co.*, 1864, 4 B. & S. p. 795; *S. E. Ry. Co. v. Richardson*, 1855, 15 C. B. 810; *Evans v. Lanc. & Yorkshire Ry. Co.*, 1853, 1 E. & B. 754, as to sect. 23); and hence they will regulate the procedure whether before an arbitrator or a jury. But sect. 38 is not incorporated, and the promoters need not give notice of intention to cause a jury to be summoned (*Railston v. York, &c. Ry. Co.*, 1850, 15 Q. B. 404). The promoters may make their offer of compensation when notice is given under sect. 46 of the place of inquiry (*Hayward v. Met. Ry. Co.*, 1864, 4 B. & S. 787).

By sect. 106 of the Metropolitan Management Amendment Act, 1862, no action or proceeding was to be commenced against the Metropolitan Board of Works for anything done under their powers until after one month's notice, and every such action or proceeding was to be commenced within six months after the accrual of the cause of action or ground of claim. It was held that this did not apply to a claim for compensation under this section (*Delany v. Met. B. W.*, 1867, L. R. 2 C. P. 532; 3 *ib.* 111). Section 68.

It was at one time considered that upon a claim being made under this section the promoters could test the question whether the lands had been in fact injuriously affected upon an application for an injunction against proceedings under the section. Such a course had the advantage of settling the right to compensation before the expense of settling the amount had been incurred (see *L. & N. W. Ry. Co. v. Smith*, 1849, 1 Mac. & G. 216; *The East and West India Docks and Birmingham Junction Ry. Co. v. Gattke*, 1850, 3 Mac. & G. 155; *L. & N. W. Ry. Co. v. Bradley*, 1851, 3 Mac. & G. 337). Amount of compensation is settled before trial of right.

But it is now settled that the amount of the claim must be ascertained in the first instance, and the company, if they wish to contest the right to compensation, can do so by raising that defence in an action on the award (*Reg. v. L. & N. W. Ry. Co.*, 1854, 3 E. & B. 443; *Read v. Victoria Station & Pimlico Ry. Co.*, 1863, 1 H. & C. p. 840; and see *Horrocks v. Met. Ry. Co.*, 1863, 4 B. & S. 315; *S. C. Reg. v. Met. Ry. Co.*, 32 L. J. Q. B. 367).

Ever since the decision of Lord Truro in *E. & W. India Dock Co. v. Gattke* (3 Mac. & G. 155), the practice has been perfectly well settled that the proper way of trying the right of a person to compensation under this Act is not by injunction, and an injunction to restrain proceedings under the Act has not, it seems, been granted since 1851. The proper way of trying the question is to leave the claimant to bring an action on the award, when, if he has no title, he will get nothing, and if he has a title he will get the sum awarded (*London & Blackwall Ry. Co. v. Cross*, 1886, 31 C. D. p. 367, per Lindley, L. J.; *cf. Brierley Local Board v. Pearsall*, 1884, 9 App. Cas. 595; *Kitts v. Moore & Co.*, 1895, 1 Q. B. 253).

But it is not clear that the same rule applies where there are several grounds of claim, some of which have been satisfied (*D. of Norfolk v. Tennant*, 1852, 9 Hare, p. 747).

Section 63.

Liability
to pay full
claim on
default in
summon-
ing jury.

If the claimant gives notice for a jury the company are bound to issue their warrant for summoning the jury within twenty-one days, or they will be liable to pay the amount claimed. This result follows although the delay is due to a mistake as to procedure. The twenty-one days run from the service of the original notice; not from service of notice for a special jury under sect. 54 (*Re Aberdare Ry. Co.*, 1859, 6 C. B. N. S. 359; see *Re Aberdare Ry. Co.*, 1860, 8 W. R. 603).

Where after notice to treat, the landowner, being a lessor, replies by a notice stating his title to the land and the compensation he claims, and the company neither refer the matter to arbitration nor summon a jury to decide it, but enter upon the land, they thereby acquiesce in the amount claimed, and the landowner may bring an action for it under sect. 68 (*Eaton v. Mid. G. W. Ry. Co.*, 1847, 10 Ir. L. R. 310).

Interest
on sum
recovered
under
sect. 68.

Under sect. 85 interest at 5l. per cent. is payable on a sum recovered under sect. 68 for neglect to issue a warrant to the sheriff within twenty-one days after notice that the proprietor wishes to have the amount of compensation settled by a jury (*Re Aberdare Ry. Co.*, 1860, 8 W. R. 603).

Plea of
mala fides.

In an action to recover the full sum claimed because of the default of the company to summon a jury within twenty-one days, a plea "that the claim is not a *bond fide* claim within the statute, but in fraud of the defendants, and without any reasonable cause," will not be allowed (*Hooper v. Bristol Port Ry., &c. Co.*, 1866, 35 L. J. C. P. 299).

As to the corresponding provision of sect. 36 of the Lands Clauses (Scotland) Act, 1845, see *Falconer v. Aberdeen Ry. Co.*, 1853, 15 Sess. Cas. (2nd series) 352.

Adverse
claimants.

Where the title to the premises injuriously affected is in dispute, in proceedings to determine who is entitled to the compensation the person in possession has the right to put the adverse claimant to prove his title in an action of ejectment (*Metrop. Board of Works v. Sant*, 1868, 7 Eq. 197).

APPLICATION OF MONEY COMING TO PERSONS
NOT ABSOLUTELY ENTITLED, PREVENTED
FROM TREATING, OR NOT MAKING TITLE.

And with respect to the purchase money or compensation coming to parties having limited interests, or prevented from treating, or not making title, be it enacted as follows:—

- § 69. Money to be paid into Bank. How to be applied in Case of Persons not absolutely entitled.
- § 70. Order for such application. Interim Investment.
- § 71. Sums under £200 and above £20.
- § 72. Sums not exceeding £20.
- § 73. Money payable to Party not absolutely entitled in respect of Accommodation Works, Withdrawal of Opposition to Bill, &c., to be paid into Bank. Power for Court to allow Sum to Tenant for Life for Damage by Inconvenience.
- § 74. Application of Money paid in for Purchase of Leases and Reversions.
- § 75. In Default of Conveyance or Satisfactory Title, Deed Poll to be executed.
- § 76. In Default of Conveyance or good Title, or in Case Owner refuse Purchase Money, or be absent, Money to be deposited in Bank.
- § 77. Receipt to be given, and, on Deed Poll being executed, Lands to vest in Company as against such Persons.
- § 78. Investment and Application of such Money.
- § 79. Until contrary shown, Party in Possession to be deemed the Owner.
- § 80. Costs where Money paid into Court.

*Application of Money paid into the Bank in Case of
Persons not absolutely entitled.*

LXIX. If the purchase money or compensation which shall be payable in respect of any lands, or any interest therein, purchased or taken by

Section 69.

Compen-
sation
payable to

Section 69.

person
under
disability
amount-
ing to
200*l.* to be
deposited
in the
Bank.

*Repealed
by St.
L. R. Act,
1892.

the promoters of the undertaking from any corporation, tenant for life or in tail, married woman seised in her own right or entitled to dower, guardian, committee of lunatic or idiot, trustee, executor or administrator, or person having a partial or qualified interest only in such lands, and not entitled to sell or convey the same except under the provisions of this or the special Act, or the compensation to be paid for any permanent damage to any such lands, amount to or exceed the sum of two hundred pounds, the same shall be paid into the Bank, in the name and with the privity of the Accountant-General of the Court of Chancery* *in England, if the same relate to lands in England or Wales, or the Accountant-General of the Court of Exchequer in Ireland, if the same relate to lands in Ireland* to be placed to the account there of such Accountant-General, *ex parte* the promoters of the undertaking (describing them by their proper name), in the matter of the special Act (citing it), pursuant to the method prescribed by any Act for the time being in force for regulating moneys paid into the said Courts; and such moneys shall remain so deposited until the same be applied to some one or more of the following purposes—that is to say,

Applica-
tion of
moneys
deposited.

In the purchase or redemption of the land tax, or the discharge of any debt or incumbrance affecting the land in respect of which such money shall have been paid, or affecting other lands settled therewith to the same or the like uses, trusts, or purposes; or

In the purchase of other lands to be conveyed, limited, and settled upon the like uses, trusts, and purposes, and in the same manner, as the lands in respect of which such money shall have been paid stood settled; or

If such money shall be paid in respect of any

buildings taken under the authority of Section 69. this or the special Act, or injured by proximity of the works, in removing or replacing such buildings, or substituting others in their stead, in such manner as the Court of Chancery shall direct; or
In payment to any party becoming absolutely entitled to such money.

As to costs under this section, see sect. 80.

A railway company is not a corporation in the sense of sect. 67 of the L. C. C. (Scotland) Act, 1845 (8 & 9 Vict. c. 19), corresponding to this section, so as to necessitate payment into the Bank of money paid for lands taken from the company under statutory powers (*Caledonian Ry. Co. v. City of Glasgow Union Ry. Co.*, 1869, 7 Ct. of Sess. Cas. 3rd series, 1072). Compensation payable to a company.

A public company is a corporation within this section, and where the land of such a company is taken under the Act, the purchase money should be paid into Court, and it can then be paid out to the company as being absolutely entitled (*Re Chelsea Waterworks Co.*, 1887, 56 L. T. 421, per Kay, J., not following *Cal. Ry. Co. v. City of Glasgow Union Ry. Co.*, *supra*).

Where a company had, under pressure, paid the purchase money to the vendors (who were a corporation) the latter were ordered to pay it into Court, under this section, for *interim* protection (*L. & N. W. Ry. Co. v. Corp. of Lancaster*, 1851, 15 Beav. 22).

Payment into Court of purchase money of land belonging to an infant does not constitute the infant a ward of Court (*Re Wilts, &c. Ry. Co.*, 1865, 2 Dr. & Sm. 552). To infant.

Where land belonging to a lunatic has been purchased, the money may be ordered to be paid to the credit of the lunacy, and invested to the joint account of the lunatic and the company, without being first paid into Court under this section; but the application for such an order must be made in the Chancery Division as well as in Lunacy (*Re Milnes*, 1875, 1 C. D. 28). To lunatic.

The section only applies in cases in which the company is dealing with executors and other persons having a limited interest. Hence, where a testator absolutely entitled has contracted for the sale of leaseholds to a com- Death of vendor absolutely entitled.

Section 69. pany, and dies before payment of the purchase money, the company should not pay the money into Court under this section (*Newton v. Met. Ry. Co.*, 1861, 8 Jur. N. S. 738).

**Pay-
master-
General.**

The duties of the Accountant-General of the Court of Chancery are now performed, and his powers exercised, by the Paymaster-General (Court of Chancery (Funds) Act, 1872 (35 & 36 Vict. c. 44), ss. 4, 6; see Supreme Court of Judicature (Funds, &c.) Act, 1883 (46 & 47 Vict. c. 29)).

**Mode of
payment
in.**

As to the method prescribed for paying money into Court, see Court of Chancery (Funds) Act, 1872; Supreme Court of Judicature (Funds, &c.) Act, 1883; Supreme Court Funds Rules, 1886, rr. 30, 35, 39; Form 9.

**Mandamus
to compel
payment
in.**

Where a sum of money has been awarded under sect. 68, *mandamus* will be granted to compel the company to pay the amount into the Bank under sect. 69 (*Barnett v. G. E. Ry. Co.*, 1868, 18 L. T. 408; *cf. Barnett v. Met. Ry. Co.*, 1866, 16 W. R. 793, *infra*, p. 219). The order will be obtained in an action of *mandamus* under R. S. C. Ord. 53, replacing sect. 68 of the C. L. P. A. 1854.

Application of Moneys Deposited.

1. In discharge of incumbrances.

**Redemp-
tion of
land tax.**

Under a special Act with similar provisions, a tenant for life, who had redeemed the land tax before the passing of the Act, was allowed to reimburse himself out of the proceeds of the lands (*Ex p. Northwick*, 1834, 1 Y. & C. Ex. 166).

**Tithe rent-
charge.**

Quit rent is an incumbrance within this section, and compensation can be applied in redeeming it (*Ex p. Studdert*, 1856, 6 Ir. Ch. 53); and so as to tithe rent-charge (*Ex p. Lord Leconfield*, 1874, 1 R. 8 Eq. 559).

But in *Re Dublin, W. & W. Ry. Co.*, *Ex p. Tottenham* (1884, 13 L. R. Ir. 479), application of the money in redemption of tithe rent-charge was not allowed.

**Improve-
ment
charge.**

A charge under the Drainage Act (5 & 6 Vict. c. 89), which is repayable by instalments, should not be paid out of the fund (*Re Commrs. of Public Works, Ex p. Studdert*, 1856, 6 Ir. Ch. 53; see *Ex p. Rector of Kirksmeaton*, 1882, 20 C. D. 203. But now see Settled Land Act, 1887, s. 1, quoted *infra*, p. 194).

**Corpora-
tion bonds,
&c.**

Money paid in for the purchase of lands belonging to a corporation has been applied in the payment off of mort-

gages of certain tolls, and of bonds which had been given by the corporation for moneys borrowed under the provisions of the 9 & 10 Vict. c. 74 (Baths & Washhouses Act, 1846), s. 21, and were payable out of the borough fund, which fund largely consisted of the rents and profits of the real estates of the corporation (*Re Derby Municipal Estates*, 1876, 3 C. D. 289). Section 69.

The money may be applied in paying off incumbrances on lands settled to similar uses as the lands taken (*Re Dublin, W. & W. Ry. Co., Ex p. Richards*, 1890, 25 L. R. Ir. 175). Incumbrances on lands settled to similar uses.

All lands of a municipal corporation are held upon the same or like uses, trusts, or purposes, so that money paid for the taking of one part may be applied to the redemption of an incumbrance upon another part (*Ex p. Corp. of Cambridge*, 1848, 6 Hare, 30). Municipal corporation.

This section authorises the application of the purchase money in the enfranchisement of copyholds settled on the same trusts, either as being the discharge of an incumbrance or a reinvestment in other lands (*Re Cheshunt College*, 1855, 3 W. R. 638; *Dixon v. Jackson*, 1856, 4 W. R. 450). Enfranchisement.

A leasehold interest is an incumbrance under this section (*Re M. S. & L. Ry. Co., Ex p. Corp. of Sheffield*, 1855, 21 Beav. 162). Hence the money may be applied in buying up a lease of other lands subject to the same trusts as the lands sold (*Ex p. Bishop of London*, 1860, 2 D. F. & J. 14; *Ex p. Corp. of London*, 1868, 5 Eq. 418; *Re Marquis of Townshend's Estates*, W. N. 1882, p. 7). Purchase of leases.

Under an Inclosure Act some lands were allotted to a rector who had a power of selling to pay the expenses. Under a Railway Act compensation was made in respect of other lands of the rectory, and paid into Court. The Court sanctioned the application of the money in Court to the payment of the expenses of the inclosure (*Ex p. Lockwood*, 1851, 14 Beav. 158); and so where, under the Inclosure Act, the allotment is charged with the expenses (*Ex p. Queen's College*, 1851, 14 Beav. 159, note; and see *Vernon v. Earl Mansers*, 1862, 11 W. R. 133). Inclosure expenses.

Section 69.**2. In purchase of other lands.****Person absolutely entitled.**

A person absolutely entitled to the fund is entitled to have it re-invested in land at the cost of the company (*Re Dodd's Estate*, 1871, 19 W. R. 741; *Re Jones's Trust Estate*, 1870, 18 W. R. 312; *Re Parker's Estate*, 1872, 13 Eq. 495; see *Re De Beauvoir*, 1860, 2 D. F. & J. 5).

Money of lunatic.

The purchase money of land taken belonging to a lunatic has been ordered to be re-invested in guaranteed railway stock, the name of the public body being omitted from the title of the account, and the re-investment taken as being equivalent to a re-investment in land (*Re Buckingham*, 1876, 2 C. D. 690).

Married woman.

Where a married woman not entitled for her separate use is petitioning for re-investment in land she should be separately examined (see *Re Arabin's Trusts*, W. N. 1885, p. 90).

Charity funds.

The consent of the Charity Commissioners is not requisite to an application for the investment of money in Court (*Re Lister's Hospital*, 1855, 6 D. M. & G. 184, approving *Re Cheshunt College*, 1855, 3 W. R. 638; *Re William of Kyngeston's Charity*, 1881, 30 W. R. 78; see *Re L. B. & S. C. Ry. Co.*, 1854, 18 Beav. 608), though it is necessary for payment out (*infra*, p. 198).

Purchase of land subject to mortgage.

The land purchased may be declared to be subject to the mortgages which affected the land taken by the company in common with the rest of the settled estates (*Ex p. Peyton's Settlement*, 1855, 4 W. R. 380).

But the Court will not allow a re-investment in an equity of redemption (*Re Portadown, &c. Ry. Co.*, 1876, 1. R. 10 Eq. 368; *Ex p. Craven*, 1848, 17 L. J. Ch. 215).

Copy-holds.

The money may be invested in the purchase of an estate of inheritance in copyhold property if it appears that this is for the benefit of the persons interested (*Re Cann's Estate*, 1850, 19 L. J. Ch. 376; see *Re Broigne*, 1852, 6 Ry. Cas. 733). And purchase money for leaseholds for years has been invested in the purchase of copyholds of inheritance (*Re Coyte's Estate*, 1851, 1 Sim. N. S. 202).

Leaseholds.

In general the Court will not allow the purchase of long leaseholds (*Re L. & Y. Ry. Co.*, *Ex p. Macaulay*, 1854, 2 W. R. 667), unless in the case of trustees or a corporation absolutely entitled (*Ex p. Trinity College, Cambridge*, 1868, 18 L. T. 849). But money paid in for the purchase of a chapel, which was freehold, and had been vested in trustees who had an absolute legal title, was allowed to be re-

invested in the purchase of a leasehold chapel (*Re Rehoboth Chapel*, 1874, 19 Eq. 180). Section 69.

Money paid in for the taking of leaseholds will be allowed to be re-invested in the purchase of the reversion of other leaseholds belonging to the same parties (*Re Brasher's Trust*, 1858, 6 W. R. 406). Reversion.

Money may be re-invested in the purchase of land in the Isle of Man (*Re Taylor's Estate*, 1871, 40 L. J. Ch. 454). Land in
Isle of
Man.

The money can be invested in the purchase of mines and minerals lying under a part of the settled estates (see *Bellot v. Littler*, 1874, 22 W. R. 836, a decision on a power in a will). Mines.

A power in a settlement authorizing trustees to invest money in the purchase of lands or hereditaments in fee simple in possession authorizes the purchase of freehold ground rents (*Re Peyton's Settlement*, 1869, 7 Eq. 463). Freehold
ground
rents.

Where other lands are purchased at a price exceeding the fund in Court, the Court will allow the excess to be secured by a perpetual rent-charge on the newly purchased property, and the extra costs occasioned by such a purchase will be ordered to be paid out of the fund in Court (*Ex p. Newton*, 1841, 4 Y. & C. Ex. 518). Excess of
price
secured by
rent-
charge.

Where the tenant for life had added some of his own money to the purchase money, he was allowed to charge the property so purchased to that amount by his will. The land was conveyed to the uses of the settlement subject to the power to charge by will (*Re Jones's Settlement*, 1864, 3 N. R. 632). Or by
charge.

Erection of buildings and making of improvements.

Purchase money for land has been ordered to be applied in the erection of new buildings upon land already settled to the same uses (*Ex p. Shaw*, 1841, 4 Y. & C. 506; *Re Wight*, 1858, 6 W. R. 718; *Re Dummer's Will*, 1865, 2 D. J. & S. 515); and in paying for lateral additions to a house which was part of the settled estate (*In re Speer's Trusts*, 1876, 3 C. D. 262); also in pulling down dilapidated houses and erecting artizans' dwellings (*Matthews v. Wilson*, W. N. 1883, p. 111). The cases proceed on the principle that the erection of a building is substantially the same thing as the purchase of a new estate (per James, L. J., in *Re Newman's Settled Estates*, 1874, 9 Ch. 681). Erection
of new
buildings
allowed.

Money has also been allowed to be applied, with the

Section 69. consent of all parties entitled, in payment for buildings erected previously to payment into Court but subsequently to the agreement (*Re Partington's Trust*, 1862, 11 W. R. 160).

Under special circumstances.

But this application of the money is a departure from the literal reading of the section. Hence money will be applied in erecting new buildings only where there are special circumstances showing it to be beneficial to all parties interested (*Ex p. Corp. of Liverpool*, 1866, 1 Ch. 596).

Arable lands severed from farm-buildings.

Where a railway severed the arable lands from the farm buildings, the money was ordered to be applied in building new buildings (*Ex p. Melcard*, 1859, 27 Beav. 571; *Ex p. Dean of Canterbury*, 1862, 10 W. R. 505).

Substituting dwelling-houses for trade buildings, &c.

Where the effect of the construction of a line of railway had been to divert business from certain trade buildings on another part of the estate, and to render them useless for trade purposes; also to expose to risk from fire a stackyard and farm buildings, so as to render them uninsurable; it was held that sufficient special circumstances had been shown to enable the Court to lay out part of the compensation money in taking down the trade buildings and erecting dwelling-houses on their site, and in removing the stackyard, and roofing the farm buildings with slate or tile instead of thatch (*Re Johnson's Settlement*, 1869, 8 Eq. 348).

Alteration of almshouses.

Purchase money has been applied in the alteration and improvement of almshouses (*Re Buckinghamshire Ry. Co.*, 1850, 14 Jur. 1065).

Money not applied to improvements generally.

Previously to the Settled Land Act, 1882 (*infra*, p. 192), purchase money could not be expended in making roads or drains for another part of the estate (*Re Venour's S. E.*, 1876, 2 C. D. 522, on the Leases and Sales of Settled Estates Act, 1856; *Re Belfast Water Commissioners*, 1870, 1 R. 5 Eq. 63, on s. 69; though see *Re Clitheroe's Trusts*, 1869, 17 W. R. 345; *Re Vicar of Queen Camel*, 1863, 11 W. R. 503; and *cf. Re Leslie's Settlement Trusts*, 1876, 2 C. D. 185); or in repairs or permanent improvements not placing new buildings on the land (*Drake v. Trefusis*, 1875, 10 Ch. 364; see *Brunskill v. Caird*, 1873, 16 Eq. 493); or in recouping a tenant for life the expense of improvements already made (*Re Stock's Devised Estates*, 1880, 42 L. T. 46), unless such expenditure was properly a charge upon the estate (*Re Leigh's Estate*, 1871, 6 Ch.

887; *Ex p. Davis*, 1858, 3 De G. & J. 144). The Court Section 69.
will, however, apply the money for the repair of property
not sold, where the expenditure is necessary for its
preservation (*Re Aldred's Estate*, 1882, 21 C. D. 228); or
in rebuilding houses on the estate, if this appears to be
beneficial to the estate and the remaindermen do not
object (*Re Leigh's Estate*, 1871, 6 Ch. 887; *Re Wigan
Glebe Act*, 1854, 3 W. R. 41). And a fund has been
applied in improving the supply of water to the town
where the charity property was situated (*Re Lathropp's
Charity*, 1866, 1 Eq. 467); or to another part of the trust
estate (*Re Croker's Estate*, 1877, W. N. p. 38).

In the same way the purchase money of glebe lands has
been allowed to be applied in the erection of a new
rectory-house (*Ex p. Rector of Hartington*, 1875, 23 W. R.
484; *In re Incumbent of Whitfield*, 1861, 1 J. & H. 610;
Ex p. Rector of Bradfield St. Claire, 1875, 32 L. T. 248), or
in the erection of farm buildings (*Ex p. Rector of Shipton-
under-Wychwood*, 1871, 19 W. R. 549); also in recouping
to the rector past outlay in building a farm house or farm
buildings on the glebe (*Ex p. Rector of Gamston*, 1876, 1
C. D. 477), on evidence that the buildings formed a per-
manent and valuable improvement (*Ex p. Rector of Holy-
well-cum-Needingworth*, 1879, 27 W. R. 707).

Purchase money of glebe lands has also been applied in
repairing the rectory (*Ex p. Rector of Grimoldby*, 1876, 2
C. D. 225), or cottages on the glebe (*Ex p. Rector of Holy-
well*, 1865, 13 W. R. 960); and, with the consent of the
bishop and patron, in improvements and additions to the
rectory (*Ex p. Rector of Claypole*, 1873, 16 Eq. 574; *Ex
p. Perp. Curate of Chelford*, W. N. 1866, 163); but not in
the restoration of the chancel, or in repaying a loan from
Queen Anne's Bounty (*Ex p. Rector of Grimoldby*). But
such application of the money seems not to be warranted
by the Act (see per Jessel, M. R., in *Re Nether Stoney
Vicarage*, 1873, 17 Eq. 156); and if the rector himself
advances the money for rebuilding the rectory, repayment
to him out of the fund in Court will not be ordered
(*Williams v. Aylesbury, &c. Ry. Co.*, 1874, L. R. 9 Ch.
684); nor, it seems, will the application in rebuilding be
ordered in the first instance (*Ex p. Rector of Newton Heath*,
1896, 44 W. R. 645).

Purchase money, however, has recently been applied in
the purchase, alteration, and repair of a house for a

Purchase
money of
glebe
lands.

New
rectory-
house.

Farm
buildings.

Repairs,
&c.

Section 69. vicarage. This was deemed to be equivalent to purchasing the house properly repaired. The payment of the expenses of repairs and improvements was to be made on the certificate of the architect (*Ex p. Vicar of St. Botolph, Aldgate*, 1894, 3 Ch. 544). And purchase money of lands belonging to a parish has been allowed to be applied in rebuilding the porch of the church, without obtaining the consent of the Charity Commissioners (*Ex p. Parson, &c. of St. Alphage*, 1886, 55 L. T. 314).

Money can be applied in building a house for the minister or chapelkeeper adjacent to a chapel (*Re Trustees of Lymington Baptist Chapel*, W. N. 1877, 226).

Payment
of money
for im-
prove-
ments.

Where the money in Court is to be applied in buildings or improvements, it will be paid out to the trustees of the settlement upon their undertaking to apply it in the manner sanctioned (*Re Newman's S. E.*, 1874, 9 Ch. 681); but to a tenant for life (*Re Dummer's Will*, 1865, 2 D. J. & S. 515), or to a rector (*Ex p. Rector of Shipton-under-Wychwood*, 1871, 19 W. R. 549), only on the certificate of the architect that the works have been completed, or of the master that the amount has been expended (*Ex p. Parson, &c. of St. Alphage, supra*; *Ex p. Vicar of St. Botolph, Aldgate, supra*; see *Re E. de Grey's Estate*, 1887, 32 Sol. Journ. 108). But in the case of building on glebe, where part of the money is to be obtained from Queen Anne's Bounty or other sources, the money in Court can be paid to the nominee or secretary of the bishop (*Re Incumbent of Whitfield*, 1861, 1 J. & H. 610; see 1 & 2 Vict. c. 106, s. 66; *Ex p. Rector of Claypole*, 1873, 16 Eq. 574). And money has been paid to the rector, with the written approval of the bishop, on the rector undertaking to apply the money in paying for the building of a new rectory house (*Ex p. Rector of Bradfield St. Claire*, 1875, 32 L. T. 248).

Investments under the Settled Land Acts.

Extension
to modes
of applica-
tion autho-
rized by
Settled
Land
Acts.

Sect. 32 of the Settled Land Act, 1882, provides as follows:—"Where under an Act incorporating or applying, wholly or in part, the L. C. C. Acts, 1845, 1860, and 1869 money is at the commencement of this Act in Court, or is afterwards paid into Court, and is liable to be laid out in the purchase of land to be made subject to a settlement, then in addition to any mode of dealing therewith authorized by the Act under which the money is

in Court, that money may be invested or applied as capital money arising under this Act, on the like terms, if any, respecting costs and other things, as nearly as circumstances admit, and (notwithstanding anything in this Act) according to the same procedure, as if the modes of investment or application authorized by this Act were authorized by the Act under which the money is in Court.” Section 69.

The modes in which capital moneys arising under the S. L. A. 1882 can be applied are enumerated in sect. 21 of that Act. They include:—(iii) in payment for any improvement authorized by the Act, and (ix) in payment to any person becoming absolutely entitled or empowered to give an absolute discharge. The improvements authorized by the Act are specified in sect. 25, and include (i) drainage, including the straightening, widening, or deepening of drains, streams, or watercourses; (viii) farm roads; private roads; roads or streets in villages or towns; (x) cottages for labourers, farm servants, and artisans employed on the settled land or not (or available for the working classes generally, the building of which, in the opinion of the Court, is not injurious to the estate: Housing of the Working Classes Act, 1890, s. 74); (xi) farmhouses, offices, and outbuildings, and other buildings for farm purposes. Items xvii and xviii authorize the making of streets and drains upon the development of land for building. The list of authorized improvements is extended by sect. 13 of the S. L. A. 1890, item (ii) under that section being the making of any additions to or alterations in buildings reasonably necessary or proper to enable the same to be let, and (iv) the rebuilding of the principal mansion-house on the settled land: provided that the sum to be applied under this latter item shall not exceed one-half of the annual rental of the settled land.

As to the improvements which may be effected under sect. 25, see *Re Houghton Estate* (1885, 30 C. D. 102).

The word “settlement” in sect. 32 is not to be read in the strict sense of sect. 2 (1) of the S. L. A. 1882, but in the wide sense in which “settle” is used in sect. 69; hence it applies in the case of land awarded under an Inclosure Act in respect of glebe to “A. B. and his successors, vicars of X.,” although such an instrument would not constitute a settlement within sect. 2 (1) (*Ex p. Vicar of Castle Bytham*, 1895, 1 Ch. 348). As to the wide meaning

Meaning
of “settle-
ment.”

Section 69. of “settled” in sect. 69, see *Kelland v. Fulford*, 1877, 6 C. D. 491; it means simply *standing limited*.

Sect. 32 of the S. L. A. 1882 must be read with this section, and hence purchase money of lands belonging absolutely to a charity can be dealt with under sect. 32 as “money liable to be laid out in the purchase of land to be made subject to a settlement” (*Re Byron’s Charity*, 1883, 23 C. D. 171; followed in *Re Bethlehem & Bridewell Hospitals*, 1885, 30 C. D. 541).

Lands of
universi-
ties and
colleges.

Under sect. 27 of the Universities and College Estates Act, 1858 (21 & 22 Vict. c. 44), corporations subject to the Act can borrow money on mortgage for the restoration and improvement of existing buildings, or the erection of new buildings, or for drainage, or other permanent and lasting improvement of land. Under sects. 2 and 4 of the Univ. and Coll. Estates Amendment Act, 1880 (43 & 44 Vict. c. 46), the purchase moneys arising under any sale of lands of such corporation under any Act of Parliament or otherwise are applicable to the purposes for which money may be borrowed under the above Act. The effect of these enactments is to provide, in the case of land belonging to a university or college, which is taken compulsorily under the provisions of the L. C. C. Act, 1845, another mode of investment in addition to those mentioned in sect. 69 (*Ex p. King’s Coll., Cambridge*, 1891, 1 Ch. 677). By the Universities and College Estates Act, 1898 (61 & 62 Vict. c. 55, s. 3), money may be borrowed under sect. 27 of the Act of 1858 for any of the improvements mentioned in Schedule III. to the Act of 1898, being improvements to which capital money arising under the S. L. Acts, 1882 to 1890, may be applied. The consent of the Board of Agriculture is required (*Ex p. King’s Coll., Cambridge, supra*).

Payment
of im-
provement
charges.

Prior to the enactment of the S. L. A. 1887, funds could not be applied in paying off rent-charges or instalments of a temporary nature for drainage and other improvements under the Land Improvement Act, 1864 (*Re Knatchbull’s S. E.*, 1885, 29 C. D. 588); but sect. 1 of that Act provides as follows:—

S. L. A.
1887, s. 1.

“Where any improvement of a kind authorized by the Act of 1882 has been or may be made either before or after the passing of this Act, and a rent-charge, whether temporary or perpetual, has been or may be created in pursuance of any Act of Parliament, with the object of

paying off any moneys advanced for the purpose of defraying the expenses of such improvement, any capital money expended in redeeming such rent-charge, or otherwise providing for the payment thereof, shall be deemed to be applied in payment for an improvement authorized by the Act of 1882.” Section 69.

Consequently the Court has discretionary jurisdiction to authorize the application of the purchase money of glebe lands paid in under sect. 69 in the redemption of terminable rent-charges on the glebe created under the Land Improvement Act, 1864 (*Ex p. Vicar of Castle Bytham*, 1895, 1 C. D. 348); though the Court has refused to allow this where the patron objected (*S. C.*).

Capital moneys may also be applied in paying a reasonable and proper sum by way of bonus to compensate the lender for loss of interest by reason of the redemption (*Re Lord Egmont's S. E.*, 1890, 45 C. D. 395).

3. Substituted Buildings.

Money paid in respect of damage done to schools has been ordered to be laid out in improving those schools (*Ex p. Minister, &c. of St. John's Church, Fulham*, 1856, 28 L. T. O. S. 173). Improvement of schools.

The procuring and fitting-up of houses for the temporary accommodation of patients of a hospital of which the original buildings have been taken is a proper re-investment (*Re St. Thomas's Hospital*, 1863, 11 W. R. 1018). Temporary buildings for hospital.

Money has been expended in rebuilding almshouses in substitution for almshouses pulled down (*Ex p. Thorner's Charity*, 1848, 12 L. T. O. S. 266). Replacing almshouses.

As to procedure, see *Ex p. Churchwardens of Bicester* (1848, 5 Ry. Cas. 205).

4. In payment to person absolutely entitled.

Where, under a will, land is to be offered to A. at a specified price, and a company purchase under the Act at a higher price, A. is entitled to the difference (*Re Cant's Estate*, 1859, 4 De G. & J. 503). Option of purchase.

Where the fund is to be paid to a person who would have been tenant in tail of the land represented by the fund, he must execute a disentailing deed as a condition of receiving the money (*Re Reynolds*, 1876, 3 C. D. 61; Payment to tenant in tail.

Section 69. *Re Holden*, 1863, 1 H. & M. 445; *Notley v. Palmer*, 1865, 1 Eq. 241; *Re Butler's Will*, 16 Eq. 479; *Re Norcop's Will*, 1874, 31 L. T. 85; *Re Broadwood's S. E.*, 1875, 1 C. D. 438; formerly the deed had been sometimes dispensed with, *Re Row*, 1874, 17 Eq. 300; *Re Wood's S. E.*, 1875, 20 Eq. 372; *Re S. E. Ry. Co.*, 1861, 30 Beav. 215; *Re Tyler's Estate*, 1860, 8 W. R. 540; *Ex p. Maunsell*, 1868, Ir. R. 2 Eq. 32).

Where a disentailing deed is executed as to the lands taken and also other lands, the entire deed should be before the Court (*Re Field's Estate*, 1863, 8 L. T. 722).

But no disentailing deed is required where the amount is small (*Sowry v. Sowry*, 1860, 8 W. R. 339, under 200*l.*); though it was required where two tenants in tail were entitled to 964*l.* (*Re Tylden's Trust*, 1863, 11 W. R. 869). The rule as to dispensing with a disentailing deed where the sum was small was followed in *Re Watson* (1864, 10 Jur. N. S. 1011), though the Court of Appeal considered it to be opposed to the directions of the Act.

Money
paid direct
to tenant
in tail.

An order for re-investment has been made when the money has been paid direct to the tenant in tail, payment into Court being dispensed with (*Ex p. Earl of Abergaenny*, 1855, 4 W. R. 315).

No pay-
ment to
tenant for
life in
respect of
minerals.

No apportionment can be directed under sect. 69, and a tenant for life, without impeachment of waste, is not entitled to any part of the compensation money paid by a railway company in respect of minerals under the settled estate though the whole of the minerals would probably have been worked out in his lifetime. The whole of the money will be invested, and the income only paid to the tenant for life (*Re Robinson's Settlement Trusts*, 1891, 3 Ch. 129; see *Ex p. Ward*, 1848, 2 De G. & Sm. 4, *infra*, p. 211).

Payment
to married
woman.

Where the fund in Court is the property of a married woman, but she is not separately entitled under the M. W. P. A. 1882, or otherwise, it will not be paid out except upon her separate examination in Court or an acknowledged deed (*Re Robins' Estate*, 1879, 27 W. R. 705; *Re Hayes*, 1861, 9 W. R. 769; *Re Tyler's Estate*, 1860, 8 W. R. 540; see *Standerling v. Hall*, 1879, 11 C. D. 652; *Tennent v. Welch*, 1888, 37 C. D. 622).

But where the amount is under 500*l.* it will, with the husband's consent, be paid to the married woman on her separate receipt, without separate examination or

acknowledged deed (*Re Morton's Estate*, W. N. 1874, p. 181; see *Andrewes v. Tyrrell*, 1885, 29 Sol. Journ. 622; *Frith v. Leicis*, W. N. 1881, p. 145; in *Gibbons v. Kibbey*, 1861, 10 W. R. 55 (264*l.*), separate examination was insisted on). And as to payment out of small sums, without either separate examination or acknowledged deed, see *Knapping v. Tomlinson* (1870, 18 W. R. 684); *Guest v. Neames* (W. N. 1884, p. 227); Seton, fifth ed. 789; as to payment to married woman's mortgagee (*Pollock v. Birmingham, &c. Ry. Co.*, 1865, 13 W. R. 401); and as to the practice where proceeds of sale of real estate are in Court in a partition action, see *Wallace v. Greenwood* (1880, 16 C. D. 362). As to payment out on the presumption that a married woman will have no children, see *Re Allason's Trusts* (1877, 36 L. T. 653).

Section 69.

A dowress, where money is in Court belonging to an infant subject to her right to dower, is entitled to have the value of her right of dower as determined by the valuers paid to her out of the fund (*Re Hall's Estate*, 1870, 9 Eq. 179).

Dower.

The Court has jurisdiction to direct the transfer of the fund to the credit of a pending cause (*Melling v. Bird*, 1853, 22 L. J. Ch. 599). Such a transfer is a payment out of Court from one fund to pay it in to another fund. But this was refused in *Nash v. Nash*, 1868, 37 L. J. Ch. 927, where the land was the subject of an administration suit between the remainderman and the tenant for life (*infra*, p. 203).

Transfer to credit of cause.

It was formerly considered that trustees with a power of sale were included under the phrase "party becoming absolutely entitled," so that the Court would order payment out to them without inquiring into the trusts (*Re Hobson's Trusts*, 1878, 7 C. D. 708; *Re Gooch's Estate*, 1876, 3 C. D. 742; *Re L. B. & S. C. Ry. Co.*, W. N. 1888, p. 179); even though the power of sale had not arisen (*Re Vestry of St. Luke's*, W. N. 1880, p. 58; *Re Morgan's S. E.* 1870, 9 Eq. 587; *Re Thomas's Settlement*, 1882, 30 W. R. 244; see *Re East*, 1853, 2 W. R. 111); provided, where the trust was for sale after the death of a tenant for life, that such tenant consented (*Re Evans' Settlement*, 1880, 14 C. D. 511; *Re Ward's Estates*, 1884, 28 C. D. 100; overruling *Re Horwood's Estate*, 1861, 3 Giff. 218); and under special circumstances payment out was ordered though there was no power of sale

Trustees with power of sale.

Section 69. (*Re Illman's Will*, 1870, 18 W. R. 962). Where the trust was for sale as soon as the youngest of the *cestui que trusts* attained 21, and for division of the proceeds among them, and the Court, after that period, refused to order payment to the trustees, an order was made for payment out of some of the shares (*Re Sowry*, 1873, 8 Ch. 736).

But probably the above decisions authorizing payment to trustees were given under an erroneous interpretation of the section. "I think," said Cotton, L. J., in *Re Smith* (1888, 40 C. D. p. 391), "that the words of sect. 69 point to a person who has become absolutely beneficially entitled to the money." Inasmuch, however, as sect. 32 of the S. L. A. 1882, enables moneys deposited under sect. 69 to be applied as capital moneys arising under the S. L. A. 1882, and under sect. 21 (ix) of the latter Act such moneys can be paid to "any person becoming absolutely entitled or *empowered to give an absolute discharge*," and consequently to trustees for the purposes of the Act (sect. 22), the Court has a discretion to order payment to such trustees (*Re Smith*, 1888, 40 C. D. 386; *Re Duke of Rutland's Settlement*, 1883, 31 W. R. 947); and this power is now expressly conferred by sect. 14 of the S. L. A. 1890:—"All or any part of any capital moneys paid into Court may, if the Court thinks fit, be at any time paid out to the trustees of the settlement for the purposes of the S. L. Acts, 1882 to 1890." Hence, when the trustees of a settlement have no power of sale, the Court will appoint trustees for the purposes of the S. L. Acts, and order the fund to be paid out to such trustees (*Re Harrop's Trusts*, 1883, 24 C. D. 717; *Re Wright's Trusts*, 1883, *ibid.* 662).

Advance-
ment.

Where trustees have a power of advancement which they desire to exercise, part of the fund may be paid out to them for this purpose (*Re Curcen's Settlement*, W. N. 1880, p. 83).

Payment
to single
trustee.

Save where the fund in Court is small—120*l.* for instance (*Re Long's Estate*, 1864, 12 W. R. 460)—it will not be paid out to a single trustee, unless all the parties interested are before the Court (*Re Roberts*, 1861, 9 W. R. 758). Payment out of Court to three of four trustees was directed where the fourth trustee was absent in India (*Clark v. Fenwick*, 1873, 21 W. R. 320).

Charity
trustees.

It has been held that the trustees of a charity are "persons absolutely entitled" (*Re Spurstowe's Charity*, 1874, 18 Eq. 279; *Ex p. Trustees of Tid St. Giles' Charity*,

1869, 17 W. R. 758; *contra*, *Ex p. Norfolk Clergy Charity*, W. N. 1882, p. 53); but under sect. 32 of the S. L. A. 1882, the purchase money can be dealt with as capital moneys arising under that Act (*Re Byron's Charity*, 1883, 23 C. D. 171), and can be paid to the trustees with the consent of the Charity Commissioners (*Re Faversham Charities*, 1862, 10 W. R. 291). If the Charity Commissioners have no jurisdiction in the matter, their consent need not be obtained (*Re Clergy Orphan Corporation*, 1894, 3 Ch. 145). Where the Commissioners have authorized an outlay as capital expenditure the trustees of the charity are entitled to have the money paid out to them as the "persons absolutely entitled" within sect. 69 (*Ex p. The Haberdashers' Co.* 1886, 55 L. T. 758).

As regards the purchase money of land taken under the Act which belonged to a person under disability, the section effects a constructive reconversion. This operates until the removal of the disability, but till that event happens the money is to be considered as land. Consequently the purchase money of land of which an infant was absolutely seised in fee remains impressed with the character of real estate, and on the death of the infant descends to his heir at law (*Kelland v. Fulford*, 1877, 6 C. D. 491; *cf. Re Harrop's Estate*, 1857, 3 Drew. 726).

Recon-
version
during
continu-
ance of
disability.

The money stands in the same position as land until the moment comes when some person is absolutely entitled to it. So long as that is uncertain and the time has not arrived, the money is in Court under a statutory trust for investment in land. Hence it must be treated as land and conveyed in the same way as land, and a grant of it by deed without words of limitation will give only a life estate (*Dearberg v. Latchford*, 1895, 72 L. T. 489).

Accumulations of income of funds paid into Court pass as personal estate (*Dixie v. Wright*, 1863, 32 Beav. 662).

Accumu-
lated
income.

Order for the Application of the Money. Interim Investment.

LXX. Such money may be so applied as afore-
said upon an order of the Court of Chancery **[in*
England or the Court of Exchequer in Ireland] made
on the petition of the party who would have been

Section 70.

*Repealed
by St.
L. R. A.
1892.

Section 70.

Money to
be applied
on order of
Court ;
and till
applica-
tion in-
vested in
consols,
&c.

entitled to the rents and profits of the lands in respect of which such money shall have been deposited ; and until the money can be so applied it may, upon the like order, be invested by the said Accountant-General in the purchase of Three per Centum Consolidated or Three per Centum Reduced Bank Annuities, or in Government or real securities, and the interest, dividends, and annual proceeds thereof paid to the party who would for the time being have been entitled to the rents and profits of the lands.

R. S. C.,
Ord. 55.

Procedure on Application.—The direction that applications with regard to money deposited under sect. 69 are to be made by petition must be taken subject to the following rules of R. S. C. 1883, Ord. 55 (*Ex p. Mayor of London*, 1883, 25 C. D. 384):—

R. 2.

Rule 2.—The business to be disposed of in chambers by judges of the Chancery Division shall consist of the following matters, in addition to the matters which under any other rule, or by statute, may be disposed of in chambers:—

- (1) Applications for payment or transfer to any person of any cash or securities standing to the credit of any cause or matter where there has been a judgment or order declaring the rights, or where the title depends only upon proof of the identity or the birth, marriage, or death of any person :
- (2) Applications for payment or transfer to any person of any cash or securities standing to the credit of any cause or matter where the cash does not exceed 1,000*l.* or the securities do not exceed 1,000*l.* nominal value :
- (3) Applications for payment to any person of the dividend or interest on any securities standing to the credit of any cause or matter, whether to a separate account or otherwise :

* * * *

- (7) Applications for interim and permanent investment and for payment of dividends under the L. C. C. Act, 1845, and any other Act [passed before the

14th of August, 1855], whereby the purchase money of any property sold is directed to be paid into Court. Section 70.

The generality of sub-sect. (1) is not cut down by sub-sect. (7) or any of the other sub-sections, and where an order has been made declaring the rights, an application for payment out of a sum exceeding 1,000*l.* is properly made by summons (*Re Brandram*, 1883, 25 C. D. 366; see *Re Broadwood*, 1886, 55 L. J. Ch. 646; *Re Barker*, W. N. 1884, p. 237). And the rule applies where the application is for payment to the credit of a cause (*Slater v. Slater*, 1895, 64 L. J. Ch. 688). Summons or petition.

Where the sum does not exceed 1,000*l.* application for payment out should be made by summons. Sub-sect. 2 is not restrained in its generality by the subsequent sub-sections (*Ex p. Maidstone, &c. Ry. Co.*, 1883, 25 C. D. 168; *Re Calton's Will*, 1883, *ibid.* 240; *Re Madgwick*, 1883, *ibid.* 371; *Re Arnold*, 1887, 31 Sol. Journ. 560).

But where the fund originally exceeds 1,000*l.*, and no order has been made declaring the rights, or the title does not depend only on proof of identity, &c., the application must be made by petition (*Re Erans*, 1886, 54 L. T. 527); and so also where a question of construction is involved (*Re Hicks*, 1894, 70 L. T. 529, though Kekewich, J., stated that there was diversity as to the practice).

Under sub-sect. (2) applications for payment or transfer out of Court can be made by summons only when the total fund in Court does not exceed 1,000*l.*; application cannot be made by summons for payment out of a share, amounting to less than 1,000*l.*, of a fund in Court exceeding 1,000*l.* (*May v. Douce*, W. N. 1884, p. 122).

Where the cash and the nominal value of the securities in Court are each less than 1,000*l.*, but together they exceed 1,000*l.*, a petition is properly presented for payment and transfer out (*Re Haworth*, W. N. 1885, p. 48).

Where the same application for payment out deals with different funds, some of which exceed 1,000*l.*, it is properly made by petition (*Re Rector of St. Alban's, Wood Street*, 1891, 66 L. T. 51); though it seems that as to sums under 1,000*l.* the company will only be required to pay such costs as would have been incurred on a summons (*Att.-Gen. v. St. John's Hospital, Bath*, 1893, 3 Ch. 151).

Under special circumstances an application for interim investment and payment of dividends (*Re Stafford's* When petition allowed.

Section 70. *Charity*, 1887, 57 L. T. 846), or for permanent investment (*Re Hargreave's Trust*, 1888, 58 L. T. 367), may be made by petition; and in any case the costs of a summons will be allowed on a petition (*Slater v. Slater*, 1895, 64 L. J. Ch. 688; *Re Broadwood*, 1886, 55 L. J. Ch. 646). Where a petition is proper, the company pay the costs, notwithstanding that it is rendered necessary by the complications of the settlement (*Re Jackson*, W. N. 1894, p. 50).

Where an order directing 3,968*l.* to be applied in improvements had been made on petition, and subsequently it was found necessary to spend 4,343*l.*, it was held that an application to authorize payment of the additional 375*l.* was in effect an application to vary the first order, and was properly made by petition, the costs of both petitions being payable by the company (*Re Sanders*, 1894, 70 L. T. 755).

Under R. S. C. Ord. 70, r. 1, the Court has a discretion with respect to procedure, and where a petition is cheaper and more expeditious than a summons, it will not disallow the costs of the petition, though the proceedings are within Ord. 55, r. 2 (7); but the option of proceeding by petition or summons is at the applicant's risk (*Re Bethlehem & Bridewell Hospitals*, 1885, 30 C. D. 541; see *Re E. de Grey's Estate*, 1887, 32 Sol. Journ. 108). The costs will be allowed if there was a fair case for presenting a petition (*Ex p. Trustees of Finsbury, &c. Savings Bank*, W. N. 1886, p. 150, where accrued interest raised the funds above 1,000*l.*).

Where a summons is erroneously presented and has to be followed by a petition, the costs of the summons may be allowed on the petition (*Re Jellard's Trusts*, W. N. 1888, p. 42).

Where money in Court exceeding 1,000*l.* represents the purchase price of lands belonging to a college, and the college applies for payment out, the college authorities undertaking to apply it in additional buildings, this is not an application for permanent investment, but for payment out, and is properly made by petition (*Ex p. Jesus College, Cambridge*, 1884, 50 L. T. 583).

Different
funds.

Where two portions of a settled estate have been taken by different corporations, and the purchase money dealt with by two different branches of the Court, if it is desired to invest the two funds together, only one petition should

be presented (*Re Gore Langton's Estates*, 1875, 10 Ch. 328; see *Re Lord Arden's Estates*, 1875, 10 Ch. 445). Different petitions in respect of the same fund should be presented in the same branch of the Court (R. S. C. Ord. 5, r. 9 (e); as to the former practice, see *Re Bilston Curacy*, 1862, 10 W. R. 516; *Ex p. Hayter's Trust*, 1862, 10 W. R. 557). Section 70.

As to the jurisdiction where it is desired to deal together with matters in which separate orders have been made by different judges, see *Re Brouse's Trusts* (1866, 14 L. T. 37); *Re Lord Arden's Estates* (1875, 10 Ch. 445).

Where this Act is incorporated with the special Act, a petition or summons should be entitled in the matter of both Acts (*Re Clarke's Estate*, 1864, 10 L. T. 366; see Table of Titles of Petitions, Annual Practice, 1900, I. 1046). It should not set out the clauses of a public statute (*Ex p. Osbaldiston*, 1849, 8 Hare, 31). Title of petition.

The order is made on the application of the party who would have been entitled to the rents and profits of the land in respect of which the money has been paid into Court. An annuitant should not apply (*Re St. Katherine Dock Co., Ex p. Back*, 1828, 2 Y. & J. 386), unless the income is insufficient to keep down the annuity (see *Re Wilkinson*, 1849, 3 De G. & Sm. 633). As to parish lands, see *Ex p. Annesley* (1836, 2 Y. & C. 350); as to death of petitioner, see *Ex p. Rector of Lea* (1852, 21 L. J. Ch. 776); *Re Youl* (1873, 16 Eq. 107). Who may apply.

A remainderman, who is the plaintiff in an administration action brought against the tenant for life, may not apply for investment and transfer of the fund to the credit of the cause, and deprive the tenant for life of his right to have the fund re-invested in land at the cost of the company (*Nash v. Nash*, 1868, 37 L. J. Ch. 927).

As to the persons to be served, and the consents to be obtained, see under sect. 80 (*infra*, p. 236). Who should be served.

As to the evidence on the application, see R. S. C. Ord. 52, r. 18, under which the claimant must make an affidavit not only verifying his own title, but denying title in any other person (*Re Milne's Estate*, 1863, 8 L. T. 199). The affidavit cannot be dispensed with (*Ex p. Hollick*, 1846, 4 Ry. Cas. 498), and is required though only the income is to be dealt with (Seton, 5th ed. 2017; but see *Re Smith's Leaseholds*, 1866, 14 W. R. 949). But where several are entitled jointly, an affidavit by one is enough (*Re Vale of Neath Ry. Act*, W. N. 1866, p. 78). In the case of a charity, the affidavit may be made by the Evidence.

Section 70. clerk to the trustees (*Re Ed. VI.'s Almshouses*, 1868, 16 W. R. 841; *cf. Re Rector of St. Benet's*, 1865, 12 L. T. 762).

Where numerous persons are entitled, an affidavit of a trustee of the estate will be sufficient (*Re Batty's Trusts*, W. N. 1877, p. 212); or, in case of illness, an affidavit of the solicitor (*Re Halsey's Estate*, 1870, 22 L. T. 11).

The affidavit has been dispensed with in the case of a petition by an important public corporation (*Re Magdalen Coll., Oxford*, 1880, 42 L. T. 822).

On application for payment out, proof of the signatures of the attesting witnesses to a deed affecting the applicant's title was held to be sufficient evidence of the execution of the deed (*Re Mair's Estate*, 1873, 28 L. T. 760). In *ex parte* cases a deed must, if possible, be proved by the attesting witness (*Re Reay's Estate*, 1855, 3 W. R. 312; *Re Rice*, 1886, 32 C. D. 35).

. *Re-investment in land.*—The Court will not sanction a re-investment in land upon a surveyor's opinion as to value, but requires the facts to be proved, in order that it may form its own conclusions (*Re Kinsey*, 1863, 1 N. R. 303). The matter may be referred to chambers (*Re Dunraven Estates*, 1861, 5 L. T. 523).

Investigation of title.

A reference as to the title will be made to the conveyancing counsel, and upon the title being reported by him to be satisfactory the order will be made without a second summons being required. Evidence must be given that the purchase is an eligible one (*Re Caddick's Settlement*, 1852, 9 Hare, App. p. ix). Where the value is small the reference to the conveyancing counsel can be dispensed with (*Re Lapicorth Charity*, W. N. 1879, p. 37; *cf. Ex p. Vicar of East Dereham*, 1852, 21 L. J. Ch. 677); or if not exceeding 50*l.* the investigation of title may be dispensed with (*Re Bloomfield*, 1876, 25 W. R. 37).

Prospective order.

An order will be made prospectively for payment of the money on certificate of the chief clerk that the title has been approved and the conveyance executed (*Re Hitchin's Estate*, 1853, 1 W. R. 505; *cf. Ex p. Metherell*, 1851, 20 L. J. Ch. 629).

But the Court will not order a reference as to a proposed re-investment in land, with a further direction that, if it is not satisfactory, the Master may be at liberty to approve of a proper investment when presented to him (*Ex p. Pumfrey, re Oxford W. & W. Ry. Co.*, 1846, 4 Ry. Cas. 490).

For form of order, see Seton, 5th ed. p. 2019; 10 Hare,

App. xxxvi; and *cf. Ex p. Methereil, supra; Re Martin*, 1853, 22 L. J. Ch. 248; and as to the practice generally on a re-investment in land, see *Anon.*, 1854, 18 Jur. 742; *Re Caddick's Settlement*, 1853, 9 Hare, App. lxxxv. Section 70.

Interim investment.—After some conflict of opinion (see *Re Fryer's Settlement*, 1875, 20 Eq. 468; *Ex p. Vicar of St. Mary, Wigton*, 1881, 29 W. R. 883; *Ex p. Rector of Kirksmeaton*, 1882, 20 C. D. 203), it is now settled that money paid into Court under this Act is “cash under the control of the Court,” and may be invested in any of the securities available for such cash (*Ex p. St. John Baptist Coll., Oxford*, 1882, 22 C. D. 93; *Re Brown*, 1890, 59 L. J. Ch. 530; for investments see R. S. C. Ord. 22, r. 17). “Cash under control of Court.”

An order for interim investment should specify the securities in which the money is to be invested (see *Re Taylor's S. E.*, 1880, 28 W. R. 594).

Payment of dividends.—The dividends of an interim investment are payable to the party who would for the time being have been entitled to the rents and profits of the land. On the death of the tenant for life an apportionment of the accruing income will be made (Apportionment Act, 1870); formerly this could not be done (*Re Lawton's Estate*, 1866, 3 Eq. 469). If income is due to the estate of the deceased tenant for life, his personal representatives should be before the Court (*Re Ackers' Will*, 1862, 7 L. T. 525). Payment to tenant for life.

Where the company are in possession, the tenant for life is entitled to the dividends of the purchase money, although the conveyance has not been executed by all the necessary parties, unless there are circumstances which disentitle him (*Re Wrey's Settlement*, 1865, 13 W. R. 543; *Re Hungerford's Trusts*, 1855, 1 K. & J. 413).

The dividends have been ordered to be paid to the quondam owner in fee, although there was an annuitant (*Ex p. Cofield*, 1847, 11 Jur. 1091); and *a fortiori*, where the annuitants concur and undertake not to distrain (*Re Pedley's Estate*, 1855, 1 Jur. N. S. 654). To owner, notwithstanding annuity.

Dividends will be ordered to be paid to the trustees of a settlement or will for the time being, or one of them (*Re Coulson's Settlement*, 1867, 17 L. T. 27; *Re Foy's Trusts*, 1875, 23 W. R. 744; see *infra*, p. 233). To trustees.

Dividends of investments of money paid in in respect of lands belonging to an archbishop were ordered to be paid to the archbishop for the time being (*Ex p. Archb. of* To archbishop for time being.

Section 70. *Canterbury*, 1848, 2 De G. & S. 365; *cf. Ex p. Bicester*, 1848, 5 Ry. Cas. 702, payment to the vicar for the time being).

Purchase
money of
charity
lands.

Where charity lands are taken, and the rector for the time being is perpetual trustee, the dividends will be ordered to be paid to him (*Re Davenant's Charity*, 1854, 2 W. R. 344); or to the secretary for the time being of the trustees of the charity, of which there is no treasurer (*Re Codrington's Charity*, 1874, 18 Eq. 658).

Purchase
money of
burial
ground.

A rector who has enjoyed the right to burial fees from a burial ground, the freehold of which is vested in trustees, is the person entitled under this section to receipt of the rents and profits, and whatever may be the ultimate destination of the fund, the dividends, so long as it remains in Court, are payable to the rector for the time being (*Ex p. Rector of St. Martin's, Birmingham*, 1870, 11 Eq. 23; *Ex p. Rector of Liverpool*, 1870, 15 Eq. 15). It is the same though the burial ground had been closed for a long period previously to the taking of the land, and the rector had in consequence ceased to derive any income whatever from it (*Ex p. Rector of Liverpool*). And so, where the fees of a burial ground had formerly been paid over to trustees and the burial ground had been closed, it was held that, upon a part being taken by a railway company, the trustees were entitled to receive the dividends of the purchase money (*Re St. Pancras Burial Ground*, 1866, 3 Eq. 173).

Where
title shown
to part
only of
land.

As to the practice where a title is shown to only a part of the land taken, see *Re Perk's Estate*, 1853, 1 Sm. & G. 545.

Sums under £200 and above £20.

Section 71.

Sums
between
200*l.* and
20*l.* may
be paid
into Bank
or to
trustees.

LXXI. If such purchase money or compensation shall not amount to the sum of £200, and shall exceed the sum of £20, the same shall either be paid into the Bank, and applied in the manner hereinbefore directed with respect to sums amounting to or exceeding £200, or the same may lawfully be paid to two trustees, to be nominated by the parties entitled to the rents or profits of the lands in respect whereof the same shall be payable, such nomination to be signified by writing under the hands of the party so entitled; and in case of the coverture, infancy, lunacy, or other incapacity of the parties entitled

to such moneys, such nomination may lawfully be made by their respective husbands, guardians, committees, or trustees; but such last-mentioned application of the moneys shall not be made unless the promoters of the undertaking approve thereof, and of the trustees named for the purpose; and the money so paid to such trustees, and the produce arising therefrom, shall be by such trustees applied in the manner hereinbefore directed with respect to money paid into the Bank, but it shall not be necessary to obtain any order of the Court for that purpose.

Section 71.

But to trustees only with approval of promoters.

May be applied by trustees without order of Court.

Where the fund in Court was about to be reduced by a re-investment in land to less than 70%, the residue was ordered to be paid to trustees nominated under this section (*Re Kinsey*, 1863, 1 N. R. 303).

Residue under 70%.

Where, upon investment, a residue of 30% remained, this was ordered to be paid to the tenant for life, he undertaking to lay it out in lasting improvements (*Ex p. Barrett*, 1850, 19 L. J. Ch. 415). In *Re Bateman's Estate* (1852, 21 L. J. Ch. 691) the limit was put at 20%, but in *Re Guardians of Kells Union, Ex p. Smith* (1888, 21 L. R. Ir. 346), 34% was paid out on the same undertaking as in *Ex p. Barrett*.

Payment to tenant for life.

Sums not exceeding £20.

LXXII. If such money shall not exceed the sum of £20, the same shall be paid to the parties entitled to the rents and profits of the lands in respect whereof the same shall be payable for their own use and benefit; or in case of the coverture, infancy, idiotcy, lunacy, or other incapacity of any such parties, then such money shall be paid, for their use, to the respective husbands, guardians, committees, or trustees of such persons.

Section 72.

Sums not exceeding 20% may be paid to parties entitled to income.

A balance of less than 20% remaining after investment will be paid to the tenant for life (*Re Lord Egremont*, 1848, 12 Jur. 618; *Ex p. Rector of Loughton*, 1849, 5 Ry.

Section 72. Cas. 591). In *Re Hitchin's Estate* (1853, 1 W. R. 505), the petitioner undertook to lay the balance out in lasting improvements. In *Ex p. Vicar of Bredicot* (1848, 5 Ry. Cas. 209), payment of a balance of 20*l.* was refused.

Money payable to Party not absolutely entitled in respect of Accommodation Works, Withdrawal of Opposition to Bill, &c., to be paid into the Bank. Power for Court to allow a Sum to Tenant for Life for Inconvenience.

Section 73.

Sums over 20*l.* payable for compensation under contract with person not absolutely entitled to be paid into Bank on behalf of inheritance: but Court may make allowance to limited owner for personal inconvenience.

LXXIII. All sums of money exceeding £20 which may be payable by the promoters of the undertaking in respect of the taking, using, or interfering with any lands under a contract or agreement with any person who shall not be entitled to dispose of such lands, or of the interest therein contracted to be sold by him, absolutely for his own benefit, shall be paid into the Bank or to trustees in manner aforesaid; and it shall not be lawful for any contracting party not entitled as aforesaid to retain to his own use any portion of the sums so agreed or contracted to be paid for or in respect of the taking, using, or interfering with any such lands, or in lieu of bridges, tunnels, or other accommodation works, or for assenting to or not opposing the passing of the bill authorising the taking of such lands; but all such moneys shall be deemed to have been contracted to be paid for and on account of the several parties interested in such lands, as well in possession as in remainder, reversion, or expectancy: Provided always, that it shall be in the discretion of the Court of Chancery **in England or the Court of Exchequer in Ireland*, or the said trustees, as the case may be, to allot to any tenant for life, or for any other partial or qualified estate, for his own use, a portion of the sum so paid into the Bank, or to such trustees as afore-

* Repealed by St. L. R. A. 1892.

said, as compensation for any injury, inconvenience, or annoyance which he may be considered to sustain, independently of the actual value of the lands to be taken, and of the damage occasioned to the lands held therewith, by reason of the taking of such lands and the making of the works. Section 73.

This section applies as between the tenant for life and the reversioner, and does not touch the contract as between the company and the tenant for life (*Taylor v. Chichester, &c. Ry. Co.*, 1870, L. R. 4 H. L. 628). Applica-
tion of
section.

The money received for not opposing a bill must be paid into Court whether any lands of the person receiving it are taken or not, the words "contracting party" not being restricted to persons whose land is taken (*Pole v. Pole*, 1865, 2 Dr. & Sm. 420).

A railway company, upon a tenant for life withdrawing his opposition, agreed to pay him a sum of money as the expense of making a new road, and as a compensation for annoyance, and such sum was paid into Court: the Court refused to pay it out absolutely to the tenant for life: a part was ordered to be paid out for his expenses in making the road and the residue invested for the benefit of the inheritance (*Re Duke of Marlborough's Estates*, 1849, 13 Jur. 738). Examples
of pay-
ments
under
section.

Where 250*l.* was paid as the value of glebe land, and 150*l.* as compensation for damage, 30*l.* was ordered to be paid over to the rector, it appearing that it would cost that sum to make the necessary alterations in fences, &c. (*Ex p. Rector of Little Steeping*, 1848, 5 Ry. Cas. 207). For payment to the tenant for life in respect of inconvenience sustained by him, see *Re Collis* (1866, 14 L. T. 352).

Application of Money paid in for Purchase of Leases and Reversions.

LXXIV. Where any purchase money or compensation paid into the Bank under the provisions of this or the special Act shall have been paid in respect of any lease for a life or lives or years, or for a life or lives and years, or any estate in lands Section 74.
Compen-
sation for
leases or
reversions
to be in-

Section 74. less than the whole fee simple thereof, or of any reversion dependent on any such lease or estate, it shall be lawful for the Court of Chancery [*in England or the Court of Exchequer in Ireland**,] on the petition of any party interested in such money, to order that the same shall be laid out, invested, accumulated, and paid in such manner as the said Court may consider will give to the parties interested in such money the same benefit therefrom as they might lawfully have had from the lease, estate, or reversion in respect of which such money shall have been paid, or as near thereto as may be.

vested and so paid as to give parties interested the same benefits as under lease or reversion.

The section supposes purchase money paid in (1) for a leasehold interest; or (2) for a reversion on a lease; and thereupon the Court may give to the parties interested the same benefit as they would have had from the property purchased.

Corresponds to s. 34 of S. L. A. 1882.

Section 34 of the Settled Land Act, 1882, and this section are similar enactments, so that where the facts are similar, decisions on sect. 74 are authorities on sect. 34 and *vice-versâ* (*Cottrell v. Cottrell*, 1885, 28 C. D. 628).

1. Purchase of leasehold interest.

Tenant for life entitled to annuity which will run out by end of term.

Where the tenant for life is entitled to leaseholds which cannot be sold without his consent, he is entitled to receive out of the proceeds an annuity of such an amount that the payment of it will exhaust the fund in the number of years which the leaseholds had to run. If an annuity is not actually bought, it must be referred to an actuary to calculate what yearly sum, if raised out of the dividends and corpus of the fund, will exhaust the fund in the given number of years, and the amount so ascertained must be paid to the tenant for life (*Askew v. Woodhead*, 1880, 14 C. D. 27).

“There is nothing in the Act,” said Brett, L. J., in that case, “which authorizes us to say that the tenant for life is only to receive the same income as before.”

* Repealed by St. L. R. A. 1892.

The same principle had been previously adopted in *Re Phillips' Trusts* (1868, 6 Eq. 250); though previously the Court had adopted the rougher method of dividing the purchase money by the number of years of the term still to run, and paying the quotient annually to the tenant for life (*Re Money's Trusts*, 1862, 2 Dr. & Sm. 94; *Littlewood v. Pattison*, 1864, 10 Jur. N. S. 875; *Re Treacher's Settlement*, 1868, 18 L. T. 810). In *Re Pfleger* (1868, 6 Eq. 426), the tenant for life was allowed an annuity equal to the net income he had been receiving, but this is overruled by *Askew v. Woodhead*. The latter case was followed in *Re Hunt's Estate*, W. N. 1884, p. 181. See also *Re Walsh's Trusts*, 1881, 7 L. R. Ir. 554, and *Re South City Market Co.*, 1884, 13 L. R. Ir. 245. Where the income is insufficient to keep down an annuity charged on the property, the deficiency will be made up from time to time by sales of the corpus (*Re Wilkinson*, 1849, 3 De G. & Sm. 633).

If the tenant for life has been receiving only the actual income arising from the investment of the purchase money, upon his death his estate will be entitled to receive out of the corpus the difference between the income received and the aggregate amount of the annuity calculated on the above principle (*cf. Jeffreys v. Conner*, 1860, 28 Beav. 328); and if the term of the lease ends in the lifetime of a tenant for life who has only been receiving the dividends of the purchase money, he is, it seems, entitled to the corpus (*Re Beaufoy's Estate*, 1852, 1 Sm. & G. 20).

But if a lease is renewable by custom the rule does not apply, and the tenant for life takes only the actual income. The result is that one property in perpetuity is substituted for another property in perpetuity.

Thus, where leaseholds under a dean and chapter, renewable by custom, had been taken, and the purchase money, when invested in 3% per cent. stock, gave a diminished income to a tenant for life, he was not entitled to be recouped the deficiency of income out of the corpus (*Re Wood's Estate*, 1870, 10 Eq. 572; see *Re Barber's S. E.*, 1881, 18 C. D. 624).

The Court under this section can deal only with the sum paid in specifically for leaseholds or for the reversion; there is no power of apportionment between lessor and lessee (*Ex p. Ward*, 1848, 5 Ry. Cas. 398; 2 De G. & Sm. 4).

For a valuation under special circumstances of the interest of executors in leasehold premises, where the

Section 74.

Refund-
ing defi-
ciency to
estate of
tenant for
life.

Renew-
able lease.
Tenant for
life takes
only actual
income.

No appor-
tionment
under this
section.

Option to
rent.

Section 74. testator's sons had the option of using the premises at a low rent, see *Penny v. Penny* (1868, 5 Eq. 227; and see on this case Cripps on Compensation, 4th ed. p. 105).

2. Purchase of reversion.

Rever-
sioner for
limited
interest
does not
take incre-
ment of
income.

By the will of a testator, who died in 1838, land was devised to a tenant for life with remainder over in fee. In 1859 the tenant for life and remainderman concurred in demising part of the property for twenty-one years, at what was then a rack rent of 84*l.* In 1868 the demised property was taken by the Metropolitan Board of Works, and the purchase money (which when invested would yield 200*l.* a year) was paid into Court under the provisions of this Act. It was held that the tenant for life was entitled only to 84*l.* a year during the residue of the term, and that the surplus income during that time must be accumulated (*Re Mette's Estate*, 1868, 7 Eq. 72; *Re Wootton's Estate*, 1866, 1 Eq. 589. *Re Steward's Estate*, 1853, 1 Drew. 636, under which the tenant for life took the entire dividends, has not been followed).

Tenant for
life takes
increased
income as
leases fall
in.

Where land was subject to several leases, it was held that, on the date of the falling in of each lease, the tenant for life would be entitled to an additional annual sum representing the income of so much of the capital of the purchase moneys as was attributable to the property comprised in the lease which had fallen in, and of the accumulations thereof, less the rent under such lease (*Re Wilkes' Estate*, 1880, 16 C. D. 597).

The above three cases were approved in *Cottrell v. Cottrell* (1885, 28 C. D. 628), a case on sect. 34 of the Settled Land Act, 1882, where it was held that as between the tenant for life and the remainderman, where lands subject to a beneficial lease are sold under the S. L. A. 1882, the tenant for life will, during the unexpired residue of the term, be entitled to so much only of the income of the invested purchase moneys as equals the rents under the lease, and the rest of that income must be accumulated for the benefit of the inheritance until the date when the lease would have expired.

Where the tenant for life arranged with lessees, part of whose lands were taken, to pay her the same rent as before, it was held that she was not entitled to any of the dividends until the leases fell in (*Re Griffith's Will*, 1883, 49 L. T. 161).

The lessors are entitled to receive out of the purchase money a sum equal to the amount of any fine to which, had the property not been taken, they would have been entitled, such sum to be received at every period when the fine would have been payable (*Ex p. Precentor of St. Paul's Cathedral*, 1855, 1 K. & J. 538; *Ex p. Dean of St. Paul's*, 1863, 11 W. R. 482; *Ex p. Bishop of Winchester*, 1852, 10 Hare, 137).

Section 74.
Ecclesiastical leases.
Fines payable out of purchase money.

But where, through notice to treat having been received, the lease has not been renewed, and the company giving the notice has afterwards proved abortive, upon the same lands being taken by a second company the lessors are not entitled to payment out of the purchase money of the amount of such fine (*Ex p. Dean of Westminster*, 1854, 18 Jur. 1113).

Where lands belonging to an ecclesiastical corporation, which are subject to a beneficial lease, are taken, the corporation will receive out of the dividends during the residue of the term the amount of rents, and the balance will be accumulated (*Ex p. Dean of St. Paul's*, *supra*; *Ex p. Dean of Gloucester*, 1849, 19 L. J. Ch. 400; *Ex p. Dean of Christchurch*, 1853, 23 L. J. Ch. 149; *Ex p. Archbishop of Canterbury*, 1854, 23 L. T. O. S. 219; *Ex p. Merton College*, 1862, 1 N. R. 176). And if the continued payment of the rents to the person entitled is otherwise secured, the whole of the dividends are accumulated (*Ex p. Dean of Battle*, 1853, 21 L. T. O. S. 55).

Balance of income, after paying amount of rent, accumulated.

Where the rent is nominal, the whole of the dividends will be accumulated (*Ex p. Rector of Lambeth*, 1846, 4 Ry. Cas. 231; see *Re B. of Bath & Wells*, 1853, 2 W. R. 1).

On the other hand, where the circumstances are such that the property can be treated as being practically in the possession of the vendors, the whole of the dividends will be paid to them. Thus, where the lease would in the ordinary course have been surrendered and a fresh lease granted for building purposes, the corporation has been allowed to take the whole dividends (*Re Dean of Westminster*, 1858, 26 Beav. 214; *Re Hampstead Ry. Co.*, 1858, 7 W. R. 81).

If property substantially in possession, whole income paid.

And the whole dividends have been ordered to be paid to trustees for the maintenance and repair of a church, notwithstanding the existence of a lease (*Ex p. Trustees of St. Thomas's Church Lands, Bristol*, 1870, 23 L. T. 135).

Where minerals were taken which were subject to lease, and part of the purchase money was apportioned to the

Compensation for

Section 74. minerals under lease. lessor, who was a tenant for life without impeachment of waste, it was held that as the minerals were not of such an extent that they could not possibly have been got during the life of the tenant for life, he was entitled under sect. 74 to the apportioned part of the purchase money (*Re Barrington*, 1886, 33 C. D. 523; but *quære* whether this is consistent with *Re Robinson* (1891, 3 Ch. 129; *supra*, p. 196).

As to service of a petition or summons by tenant for life for investment and payment of dividends, see *Re Crane's Estate*, *infra*, p. 237.

Deed Poll in Default of Conveyance or satisfactory Title.

Section 75. On deposit in Bank of compensation agreed or awarded, the owner (including persons enabled to convey) shall convey: in default of conveyance, or if claimant fails to make title, promoters may execute deed poll, and thereupon estate capable of being conveyed by party to agreement or inquiry, shall vest in promoters. LXXV. Upon deposit in the Bank in manner hereinbefore provided of the purchase money or compensation agreed or awarded to be paid in respect of any lands purchased or taken by the promoters of the undertaking under the provisions of this or the special Act, or any Act incorporated therewith, the owner of such lands, including in such term all parties by this Act enabled to sell or convey lands, shall, when required so to do by the promoters of the undertaking, duly convey such lands to the promoters of the undertaking, or as they shall direct; and in default thereof, or if he fail to adduce a good title to such lands to their satisfaction, it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll under their common seal if they be a corporation, or if they be not a corporation, under the hands and seals of the promoters, or any two of them, containing a description of the lands in respect of which such default shall be made, and reciting the purchase or taking thereof by the promoters of the undertaking, and the names of the parties from whom the same were purchased or taken, and the deposit made in respect thereof, and declaring

the fact of such default having been made, and such deed poll shall be stamped with the stamp duty which would have been payable upon a conveyance to the promoters of the undertaking of the lands described therein; and thereupon all the estate and interest in such lands of or capable of being sold and conveyed by the party between whom and the promoters of the undertaking such agreement shall have been come to, or as between whom and the promoters of the undertaking such purchase money or compensation shall have been determined by a jury, or by arbitrators, or by a surveyor appointed by two justices, as herein provided, and shall have been deposited as aforesaid, shall vest absolutely in the promoters of the undertaking; and as against such parties, and all parties on behalf of whom they are hereinbefore enabled to sell and convey, the promoters of the undertaking shall be entitled to immediate possession of such lands. Section 75.

A company which has compulsorily taken land and applied it to the purposes of the undertaking should pay the purchase money into Court before notice of motion for that purpose is served. But where difficulties had arisen as to the title, the company having taken possession, and having used the land, the costs of a motion to pay the purchase money into Court were directed to be costs in the cause (*Williams v. Llanelly Ry. Co.*, 1868, 19 L. T. 310). Payment into Court before motion.

Deposit of Money in the Bank in Default of Conveyance or satisfactory Title, or if Owner refuse Purchase Money, or be absent.

LXXVI. If the owner of any such land purchased or taken by the promoters of the undertaking, or of any interest therein, on tender of the purchase money or compensation either agreed or awarded to be paid in respect thereof refuse Section 76.
If owner of land purchased refuse purchase money, or neglect to

Section 76.

make title, or refuse to convey; or if he be absent, or cannot be found, or fail to appear before jury, promoters may pay compensation into Bank, to credit of parties interested.

*Repealed by St. L. R. A. 1892.

to accept the same, or neglect or fail to make out a title to such lands, or to the interest therein claimed by him, to the satisfaction of the promoters of the undertaking, or if he refuse to convey or release such lands as directed by the promoters of the undertaking, or if any such owner be absent from the kingdom, or cannot after diligent inquiry be found, or fail to appear on the inquiry before a jury, as herein provided for, it shall be lawful for the promoters of the undertaking to deposit the purchase money or compensation payable in respect of such lands, or any interest therein, in the Bank, in the name and with the privity of the Accountant-General of the Court of Chancery **in England or the Court of Exchequer in Ireland*, to be placed, except in the cases herein otherwise provided for, to his account there, to the credit of the parties interested in such lands (describing them so far as the promoters of the undertaking can do), subject to the control and disposition of the said Court.

For cases on this section, see under sect. 77.

The Court has jurisdiction to order money paid in under this section to be re-invested under sect. 69 (*Dixon v. Jackson*, 1856, 4 W. R. 450).

Where there are conflicting claims to the purchase money, it should be brought into Court (*Stockport W. W. Co. v. Jowett*, 1865, 13 W. R. 977).

Receipt to be given, and Lands to vest, on Deed Poll being executed, in the Company as against such Persons.

Section 77.

Upon deposit in Bank, promoters may execute deed poll, and

LXXVII. Upon any such deposit of money as last aforesaid being made the cashier of the Bank shall give to the promoters of the undertaking, or to the party paying in such money by their direction, a receipt for such money, specifying therein for what and for whose use (described as

aforesaid) the same shall have been received, and in respect of what purchase the same shall have been paid in; and it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll, under their common seal if they be a corporation, or if they be not a corporation under the hands and seals of the said promoters, or any two of them, containing a description of the lands in respect whereof such deposit shall have been made, and declaring the circumstances under which and the names of the parties to whose credit such deposit shall have been made, and such deed poll shall be stamped with the stamp duty which would have been payable upon a conveyance to the promoters of the undertaking of the lands described therein; and thereupon all the estate and interest in such lands of the parties for whose use and in respect whereof such purchase money or compensation shall have been deposited shall vest absolutely in the promoters of the undertaking, and as against such parties they shall be entitled to immediate possession of such lands.

Section 77.
thereupon
all estate
of parties
for whose
use com-
pensation
has been
deposited,
vests in
promoters.

This and the previous section do not contemplate the case of a claimant who shows no title at all, or a title which is merely possessory; and if the purchase money is ascertained by agreement with such a person and a deed poll executed, it vests in the promoters only the possessory interest of the claimant. For the sections to operate the claimant must have some title:—

Operation
of sects.
76, 77.

By the term "owner" in sect. 76 is meant a person having *some* title, and the provisions of this section have in view the possibility of the land being subject to dower or jointure, or some other independent interest or estate outstanding in a third party, who is under no legal or equitable obligation to concur in the sale, but which does not displace the owner's title (*Douglass v. L. & N. W. Ry. Co.*, 1857, 3 K. & J. 173).

Who is an
"owner"
under
sect. 76.

A surviving partner selling partnership lands in discharge

Section 77. of his duty as survivor to wind up the partnership, is an owner within the meaning of sect. 76; and by virtue of sections 76 and 77 the promoters of the undertaking upon depositing the purchase money in the Bank to the credit of the vendor and of the representative of his deceased partner, and executing a deed poll, would acquire all the estate and interest of both (S. C.).

Possessory title.

Where, upon a contract to sell to promoters land with a sixty years' title, the vendor showed only a possessory title for thirty-six years, it was held that by paying the purchase money into the Bank and executing a deed poll under these sections the company would get only the possessory interest of the vendor. Consequently the vendor was not entitled to compel the company to pay the purchase money into the Bank (*Douglass v. L. & N. W. Ry. Co.*, 1857, 3 K. & J. 173); though if the company have gone into possession under the contract, apparently the Court will direct them, if they do not accept the title, to give up possession (S. C.).

And where the company, having agreed with the occupier for the purchase of the fee simple, and finding that he had only a possessory title of nineteen and a half years, executed a deed poll and paid the money into Court, the effect of the deed poll was held to be to vest in them merely the interest of the person with whom they contracted (*Ex p. Winder*, 1877, 6 C. D. 696).

A. contracted to sell land to a public body, but failed to make out any title to a small portion thereof. Thereupon the public body paid the purchase money of the whole land into Court under sect. 76, and executed a deed poll under sect. 77 purporting to vest the whole of the land in themselves. It was held that A. was not "owner" of the strip of land within the meaning of sects. 76 and 77, and that under the circumstances the public body could not acquire the land under those sections (*Wells v. Chelmsford Local Board*, 1880, 15 C. D. 108; *Douglass v. L. & N. W. Ry. Co.*, *supra*, followed).

Tender of costs not necessary.

The landowner is not entitled to refuse a tender of the purchase money on the ground that it does not include a tender of costs (*Re Turner's Estate*, 1861, 10 W. R. 128; *infra*, p. 227).

Compelling payment in.

The claim to compensation is not one arising from contract; it is not a mere debt, but a statutable obligation; and in an action to recover it the landowner may claim a

mandamus commanding the company to pay the amount into the Bank under this section (*Barnett v. Met. Ry. Co.*, 1866, 16 W. R. 793). Section 77.

On the other hand, where money is improperly paid into Court under the section, the vendor can recover the amount in an action for specific performance, and the company can get the money out of Court again (*Cooper v. Metrop. B. W.*, 1883, 25 C. D. 472, p. 480). Wrongful payment in.

Where a sum assessed by a jury has been paid into Court, and a deed poll executed under this section, the Court has no jurisdiction to make any order as to interest on the money (*Re Divers*, 1855, 1 Jur. N. S. 995). Interest.

Investment and Application of such Money.

LXXVIII. Upon the application by petition of any party making claim to the money so deposited as last aforesaid, or any part thereof, or to the lands in respect whereof the same shall have been so deposited, or any part of such lands, or any interest in the same, the said Court of Chancery **in England or the Court of Exchequer in Ireland*, may, in a summary way, as to such Court shall seem fit, order such money to be laid out or invested in the public funds, or may order distribution thereof, or payment of the dividends thereof, according to the respective estates, titles, or interests of the parties making claim to such money or lands, or any part thereof, and may make such other order in the premises as to such Court shall seem fit. Section 78.
On application of claimant Court may order money deposited under sect. 76 to be invested, or may order distribution, or payment of dividends.

For form of application and for evidence, see *supra*, pp. 200 *et seq.*

For payment of capital money to trustees, see *supra*, p. 197. Payment out of capital money.

Where the vendor has obtained an order directing payment of the purchase money on a certain day, and the company, alleging defect of title, pay the money into Court under this section, the Court, upon being satisfied as to the title, has jurisdiction to order the money to be paid to the vendor (*Galliers v. Met. Ry. Co.*, 1871, 11 Eq. 410).

* Repealed by St. L. R. A. 1892.

Section 78.

Appor-
tionment
where no
title to
part of
land.

On petition for payment out of money paid in in pursuance of an award, the petitioners subsequently to the arbitration having discovered that they were not entitled to a portion of the land, an apportionment was ordered under this section, the petitioners paying the costs of such apportionment (*Re Alston's Estate*, 1856, 5 W. R. 189).

For payment of dividends, see *supra*, p. 205.

Mort-
gagees.

Where the amount of the mortgage exceeds the money paid in, the whole will be paid out to the mortgagee, including a sum allowed for loss of profits in the business carried on upon the mortgaged premises (*Pile v. Pile, Ex p. Lambton*, 1876, 3 C. D. 36).

Transfer
of mort-
gage to
company.

A company having paid money into Court, and then taken an assignment of a mortgage on the land, may have the purchase money paid out to them as mortgagees under this section (*Re Marriage*, 1861, 9 W. R. 777, 843).

Arrears of
interest.

A mortgagee, on petitioning for payment of his mortgage money out of money in Court, can only obtain six years' arrears of interest (*Re Stead's Mortgaged Estates*, 1876, 2 C. D. 713).

Court can
ascertain
actual
interest of
claimant.

A jury or arbitrator, acting under this Act simply, can only assess the value of the interest claimed, and not the right to that interest, and if the money value so assessed is paid into Court under this section, the Court is bound to decide the question of right—*e.g.*, whether a lessee had a right of perpetual renewal; or whether, by reason of expenditure, he has an equity in a lease which is void at law—and if it turns out that the claimant has not the interest he claimed, but some different interest, the Court will apply its own ordinary machinery to ascertain the value of the actual interest, and after paying the amount of such value to the claimant, will return the remainder of the money to the company paying it into Court (*Brandon v. Brandon*, 1864, 2 Dr. & Sm. 305; *Ex p. Cooper*, 1865, 13 W. R. 364; *Re Hayne*, 1865, 13 W. R. 492).

Adverse
claimants.

Where the compensation is assessed by arbitration, but, owing to an adverse claim being made, the company are not satisfied with the title and pay the money into Court, a petition for payment out should be served on the adverse claimant in order that it may be seen whether the matter can be decided on petition (*Re Manor of Lorcestoft & G. E. Ry. Co.*, 1883, 24 C. D. 253; see *Ex p. Issauchaud*, 1839, 3 Y. & C. 721).

Until Contrary shown, Party in Possession to be deemed the Owner.

LXXIX. If any question arise respecting the title to the lands in respect whereof such moneys shall have been so paid or deposited as aforesaid, the parties respectively in possession of such lands, as being the owners thereof, or in receipt of the rents of such lands, as being entitled thereto at the time of such lands being purchased or taken, shall be deemed to have been lawfully entitled to such lands, until the contrary be shown to the satisfaction of the Court; and unless the contrary be shown as aforesaid, the parties so in possession, and all parties claiming under them, or consistently with their possession, shall be deemed entitled to the money so deposited, and to the dividends or interest of the annuities or securities purchased therewith, and the same shall be paid and applied accordingly.

Section 79.

Persons in possession as owners to be deemed entitled until contrary shown; and moneys to be paid out to them.

This section applies only to the jurisdiction of a court of equity in ordering money to be paid out, and not to that of a court of law in determining the rights of parties in an issue (*Ex p. Freeman, &c. of Sunderland*, 1852, 1 Drew. 184).

Applica-
tion of
section.

It is the duty of the company to state to the Court the difficulties, and to see the whole case brought forward, but not to argue any point in it (*Re Perry's Estate*, 1855, 1 Jur. N. S. 917).

Duty of
company
in case of
disputed
title.

It seems that money will be paid out to the person in undisputed possession without his being compelled to prove his title adversely, and under such circumstances a petition for payment out, or for investment, need not be served upon any other person than the company (*Re Sterry's Estate*, 1855, 3 W. R. 561), the reason being that a person who, for public purposes, is obliged by Act of Parliament to dispose of some little corner of his estate, which may be a very large and valuable one, is not to have his whole estate and title brought into jeopardy. The legislature has anxiously provided that the Court shall not, upon occasions

Proof of
title.

Section 79. of applications for payment of purchase money, deal with the property in any way whatever which can affect the title, unless it be shown so clearly as to be beyond question that there must be litigation on the question of title (V.-C. Wood in *Re St. Pancras Burial Ground*, 1866, 3 Eq. p. 183; see *Ex p. Grainge*, 1838, 3 Y. & C. 62).

Possessory title.

Title completed.

Where at the time the land is taken by the company the person in possession has acquired a good possessory title, the money will be ordered to be paid to him at once. Thus a possessory title to foreshore, proved by acts of ownership for over twenty years all consistent with the documentary evidence, is sufficient to entitle the possessor to payment, although no grant from the Crown is produced (*Re Alston's Estate*, 1856, 5 W. R. 189).

Payment was ordered to a person who had a possessory title for twenty-nine years (*Ex p. Webster*, W. N. 1866, 246).

Payment of dividends was ordered to persons deriving title under a mortgagee who had entered into possession more than forty years before, without prejudice to any question of liability to other parties (*Re Cook's Estate*, 1863, 8 L. T. 759).

Possession by lessee after termination of lease.

A person showing title by adverse possession for twenty-six years after the expiration of a long term to land taken under the Act will, in the absence of any claim by, or evidence of the existence of, the reversioner, be deemed to be the owner of the land, and entitled to the purchase money under sect. 79 (*Re Metrop. Street Improvement Act*, 1877; *Ex p. Chamberlain*, 1880, 14 Ch. D. 323).

Money lodged in Court under the L. C. A. was paid out on a title based on continued possession by a tenant without payment of rent for fifteen years after the expiration of his own and the next superior interest (*Ex p. Forde*, 1894, 1 I. R. 156).

But in *Gedye v. Comm. of Works* (1891, 2 Ch. 630), it was doubted whether *Ex p. Chamberlain*, *supra*, did not go too far, it being apparently not shown that the occupant was in as owner (see pp. 638, 639).

Inchoate possessory title.

If at the time of the company taking the land the Statute of Limitations has not fully run, and the possessor's title consequently is only inchoate, it seems that the money will remain in Court until the statute has run, and will then be paid out to the former possessor, provided no claim by the true owner has been made in the mean-

time (*Re Winder*, 1877, 6 C. D. 696; *Re Evans*, 1873, 42 L. J. Ch. 357; *contra*, *Ex p. Hollinsworth*, 1871, 19 W. R. 580). Section 79.

If, however, the possessor is entitled for a limited interest—as for a term of years—and the statute has not even begun to operate in his favour when the land is taken, he cannot become entitled to the purchase money, notwithstanding that he would probably have remained in possession after the expiration of his interest, and would have acquired a title to the land, had it not been taken (*Gedye v. Commissioners of Works*, 1891, 2 Ch. 630). Title merely expectant.

Costs in Cases of Money paid into Court.

LXXX. In all cases of moneys deposited in the Bank under the provisions of this or the special Act, or an Act incorporated therewith, except where such moneys shall have been so deposited by reason of the wilful refusal of any party entitled thereto to receive the same, or to convey or release the lands in respect whereof the same shall be payable, or by reason of the wilful neglect of any party to make out a good title to the land required, it shall be lawful for the Court of Chancery **in England or the Court of Exchequer in Ireland* to order the costs of the following matters, including therein all reasonable charges and expenses incident thereto, to be paid by the promoters of the undertaking; (that is to say,) the costs of the purchase or taking of the lands, or which shall have been incurred in consequence thereof, other than such costs as are herein otherwise provided for, and the costs of the investment of such moneys in Government or real securities, and of the re-investment thereof in the purchase of other lands, and also the costs of obtaining the proper orders for any of the purposes aforesaid, and of the orders for the payment of the dividends and interest of the securities Section 80.

In cases of money deposited in Bank, except through wilful default of landowner, Court may order promoters to pay —
(i) Costs of taking lands;
(ii) Costs of interim investment;
(iii) Costs of re-investment in other lands;
(iv) Costs of obtaining orders for these purposes and for payment of dividends & principal, except costs due to adverse litigation.

* Repealed by St. L. R. A. 1892.

Section 80.

Costs of only one re-investment in land to be allowed, unless Court otherwise orders.

upon which such moneys shall be invested, and for the payment out of Court of the principal of such moneys, or of the securities whereon the same shall be invested, and of all proceedings relating thereto, except such as are occasioned by litigation between adverse claimants: Provided always, that the costs of one application only for re-investment in land shall be allowed, unless it shall appear to the Court of Chancery **in England or the Court of Exchequer in Ireland* that it is for the benefit of the parties interested in the said moneys that the same should be invested in the purchase of lands in different sums and at different times, in which case it shall be lawful for the Court, if it think fit, to order the costs of any such investments to be paid by the promoters of the undertaking.

Costs, if not given by statute, are in discretion of Court.

It was formerly the rule that in proceedings under statutes no costs could be awarded except such as were authorized by the particular statute. Thus, where a special Act, not incorporating the L. C. A., provided only for the payment by the company of the costs of re-investment in land, no costs could be given of a petition for payment out (*Re Cherry's S. E.*, 1862, 31 L. J. Ch. 351; 4 D. F. & J. 332; *Re Charity Schools of St. Dunstan-in-the-West*, 1871, 12 Eq. 537). And this rule was not altered by R. S. C. Ord. 65, r. 1, since under that rule the Court had no jurisdiction to give costs where costs could not have been given before the Order (*Re Mills' Estate*, 1886, 34 C. D. 24, overruling *Ex p. Mercers' Co.*, 10 C. D. 481, and *Re Lee & Hemingway*, 1883, 24 C. D. 669). But a further discretion as to costs is conferred by the Judicature Act, 1890, s. 5, and where an Act enabling a public body to take land compulsorily contains no provision as to costs of payment out of Court of money paid in under the Act, such costs can be imposed on the public body under that section (*Re Fisher*, 1894, 1 Ch. 450, where land had been taken under 57 Geo. 3, cxxix.).

* Repealed by St. L. R. A. 1892.

But while a discretion as to costs is thus given in cases not provided for by the statute, it is still essential to determine whether sect. 80 applies to any particular case, for then the statutory rule excludes the discretion of the Court under R. S. C. Ord. 65, r. 1, and the Judicature Act, 1890, s. 5 (*Hasker v. Wood*, 1885, 54 L. J. Q. B. 419). "The rules of the S. C. do not override the provisions of special statutes giving special costs in particular cases" (*Reeve v. Gibson*, 1891, 1 Q. B. p. 660).

Section 80.
Statutory costs exclude discretion of Court.

The section applies where money is paid in "under the provisions of this or the special Act, or an Act incorporated therewith." The "special Act" must be an Act passed since the L. C. A. (s. 2), and in most cases arising at the present time the money is paid in under the L. C. A. or a "special Act." Hence sect. 80 clearly applies. Cases occasionally occur, however, in which money is paid in under the provisions of an Act passed before the L. C. A. and then a question arises whether there is any subsequent Act relating to the same undertaking which has the effect of making sect. 80 applicable. If the effect of a subsequent Act taken with the prior Act is to leave the payment into Court, and the subsequent dealing with the money, subject to the provisions of the prior Act, then sect. 80 is excluded (*Re Cherry's S. E.*, *supra*; *Re Mills' Estate*, *supra*; *Re St. Katharine's Dock Co.*, 1866, 14 W. R. 978; see *supra*, p. 48).

When sect. 80 applies.

If, on the other hand, an amalgamation or extension Act, passed after the L. C. A., has the effect of re-enacting the provisions of the earlier Act, then the earlier Act is an "Act incorporated" with the special Act and sect. 80 applies. "If the special Act contains and repeats the provisions which are contained in the original Act for the purpose of effecting the purposes of the Amalgamation Act, then the original Act is to be considered as an Act incorporated with the Amalgamation Act" (*Re Ellison's Estate*, 1856, 8 D. M. & G. 62, 68; *Ex p. Eton College*, 1850, 20 L. J. Ch. 1; *Re Edmeade's Estate*, 1860, 10 W. R. 327; *cf. Re Holden's Estate*, 1855, 3 W. R. 644); and it is immaterial whether the transaction was complete before 1845 or no (*Re Ellison's Estate*, overruling *Re Neachell's Trusts*, 1855, 3 W. R. 634).

As to the effect of a written undertaking by the company, on agreeing the amount of compensation, to pay costs on the same being ascertained under their Act, when the

Under-taking for costs according

Section 80. company's Act gave costs only where the amount of compensation was settled before justices, see *Marquis of Drogheda v. Gt. S. & W. Ry. Co.*, 1847, 12 Ir. Eq. R. 103.

to special Act.

Money must be paid into Court.

For an order to be made under sect. 80, the money must have been actually paid into the Bank of England; payment into another bank by agreement of the parties will not do (*Re Eastern Counties, &c. Ry. Co.*; *Ex p. Cave*, 1855, 26 L. T. O. S. 176).

But provided there is payment into the Bank under the Act, sect. 80 applies equally whether the payment is made under an earlier or a later section. Consequently a deposit in Court under sect. 85 renders the company liable to the costs provided for by sect. 80, although the payment into Court of the actual purchase money does not in the result become necessary (*Ex p. Flower*, 1866, 1 Ch. 599; *Ex p. Morris*, 1871, 12 Eq. 418). The introductory words clearly embrace the case of moneys deposited under sect. 85 (*Charlton v. Rolleston*, 1884, 28 C. D. p. 246).

Right to costs lost by wilful default.

The right to costs is lost by wilful refusal to receive the compensation or to convey, or wilful neglect to make a title; but if both parties are in fault, no costs will be given (*Ex p. Kelly*, 1849, 12 Ir. Eq. R. 398).

Wilful refusal to accept purchase money.

It is not wilful refusal where the petitioner, considering the award to be invalid, takes proceedings to have it set aside, though ultimately unsuccessful, and refuses to accept the amount awarded when tendered by the company (*Ex p. Bradshaw*, 1848, 16 Sim. 174; *Ex p. Larcon*, 1868, 17 W. R. 186).

Nor is it wilful refusal where the vendor, who has agreed to take a lease of part of the land from the company, insists that the sale and the lease shall be completed simultaneously, and refuses to accept the purchase money unless this is done (*Re Windsor, &c. Ry. Act*, 1850, 12 Beav. 522). To exclude the vendor's right to costs there must be no reason, or the refusal must be merely capricious. "Where there is a fair objection, a party is not to be treated as having wilfully refused because the reason for his refusal happens afterwards to turn out to be untenable" (S. C., per Lord Langdale, M. R.).

When the petitioner questions the right of the promoters to take his land, and takes the opinion of counsel, which is adverse to the right, and refuses to accept the purchase money when tendered or execute the conveyance, subsequently however doing both, his conduct does not amount to wilful refusal (*Ex p. Dashwood*, 1856, 5 W. R. 125).

Where the landowner believes on reasonable grounds that the notice to treat has not been properly served, and hence refuses to accept the purchase money, this is not "wilful refusal" under sect. 80 (*Ex p. Railston*, 1851, 15 Jur. 1028). Section 80.

But a vendor has no right to insist upon payment of his costs with the purchase money before the company take possession. The legislature intended to give the power of taking possession promptly, and it could not be supposed, therefore, that the company must wait until the vendor's costs are taxed. Consequently, if the demand for costs results in the purchase money being paid into the Bank, the vendor will not be allowed the costs of a petition for payment out (*Re Turner's Estate*, 1861, 10 W. R. 128).

Where a vendor is not able to convey a clear title by reason of his not having paid off incumbrances of a larger amount than the land proposed to be taken, this is not a wilful refusal or neglect to convey within sect. 80 (*Re Crystal Palace Ry. Co.*; *Re Divers*, 1855, 1 Jur. N. S. 995). Wilful refusal to convey.

If the landowner fails to deliver a statement of title within the time prescribed by the statutory notices, this is wilful neglect to make title within sect. 80 (*Re Corporation of Dublin*; *Ex p. Dowling*, 1881, 7 L. R. Ir. 173); but there is no wilful default to make title in a case where a doubt as to the title arises on a will, and the Court is called upon to put a construction on the will (*Re Woodburn's Trusts*, 1865, 13 L. T. 237). Wilful neglect to make title.

The Court has jurisdiction to refuse the applicant his costs if by his conduct he has caused undue expense to the company, though it cannot order such extra expense to be deducted from the compensation (*Ex p. Topple*, 1871, 19 W. R. 1058). Forfeiture of applicant's costs.

1. Costs of purchase or taking of lands.

Where the company take a part of land subject to a lease, the costs of an apportionment of the rent are payable under this section, and not as costs of conveyance under sect. 82 (*Ex p. Buck*, 1863, 1 H. & M. 519; where, however, since the money had not been paid into Court, sect. 80 did not apply). Apportionment of rents.

Sect. 80 only applies to costs which are not otherwise provided for; it does not apply, for instance, to the expense Costs otherwise provided for.

Section 80. of the jury process (s. 51), or to the expense of conveyance (s. 82; *Ex p. G. N. Ry. Co.*, 1848, 16 Sim. 169); and it does not apply to the costs of an action arising out of the taking of the lands; these should be provided for in the action (S. C.).

Where sect. 34 of this Act is not incorporated in the special Act, the Court can give the costs of arbitration under sect. 80, notwithstanding that express power to award costs is given to the arbitrator by the special Act (*Re Pardoe's Account & Epping Forest Act*, W. N. 1882, p. 33).

Lunatic. The costs of obtaining the sanction of the judge in lunacy to a sale of land of a lunatic are payable by the company (*Re Taylor*, 1849, 1 Mac. & G. 210; 1 H. & Tw. 432).

Land subject of action. Where the land with respect to which notice to treat is given is the subject of an administration action, the costs of an application in the action to obtain the direction of the Court as to the course to be taken with respect to the notice, are payable by the company, notwithstanding that in the result the sum offered by the company is accepted (*Haynes v. Barton*, 1861, 1 Dr. & Sm. p. 496; 1866, 1 Eq. 422; and as to the costs of orders in the action, see *infra*, p. 241).

2. Costs of interim investments.

Interim investment. The costs of an interim investment of money in Court under the Act, pending the re-investment in the purchase of other lands, are payable by the company, even though a contract for re-purchase has been entered into, provided the proceeding is not vexatious (*Re Liverpool, &c. Ry. Co.*, 1853, 17 Beav. 392); and the company pay the costs of a change of interim investment, the change not being capricious (*Re Brown*, 1890, 63 L. T. 131).

Investment not limited to consols or real securities. Money in Court under sect. 70 can be invested as "cash under the control of the Court," and costs of such investment will be allowed, although it is not in securities mentioned in sect. 80 (*Re Brown*, 1890, 63 L. T. 131).

The company pay the costs of an interim investment authorized by sect. 32 of the S. L. A. 1882, though the costs may exceed the expense of an investment in consols (*Re Hanbury's Trusts*, 1883, 31 W. R. 784).

Investment on mortgage. An investment on mortgage is an interim investment, and after an investment in consols, the company are, in

general, bound to pay the costs of a subsequent investment on mortgage, without any condition as to the costs of any future permanent investment (*Re Blyth's Trusts*, 1873, 16 Eq. 468; *Re Sewart's Estate*, 1874, 18 Eq. 278; overruling *Re Flemon's Trusts*, 1870, 10 Eq. 612). But where upon a re-investment on mortgage it is ordered that such re-investment shall be treated as a permanent re-investment, the company are not liable to pay the costs of any future application with respect to the purchase moneys (*Re Rectory of Gedling*, 1885, 53 L. T. 244).

Section 80.
mortgage
after con-
sols.

The costs of re-investment include the broker's commission (*Ex p. Corporation of Trinity House*, 1843, 3 Hare, 95). This is paid by the petitioner and allowed as costs against the company (*Re Wilson*, 1853, 1 W. R. 504; *Re Braithwaite's Trust*, 1853, 1 Sm. & G. App. xv.). The contrary rule in *Ex p. Harborough*, 1853, 17 Jur. 1045, has not been followed (Seton, 5th ed. p. 2011). The official broker must be employed (*Re W. Riding & Lanc. Ry. Bill*, W. N. 1876, p. 80).

Broker-
age.

3. Costs of re-investment in land.

The costs of re-investment in land must be paid by the company, although the applicants are absolutely entitled (*Re Jones' Trust Estate*, 1870, 18 W. R. 312; *cf. Re De Beauvoir*, 1860, 2 D. F. & J. 5, where the point was considered doubtful).

Applicant
absolutely
entitled.

Sect. 80 is narrower than sect. 69 inasmuch as it does not refer to the costs of discharge of incumbrances. Hence, where it is proposed to apply the money in this way, the company do not bear the costs of paying off the incumbrances, but only of the application to the Court (*Re Mark's Trusts*, W. N. 1877, p. 63; *Re Lord Stanley of Alderley's Estate*, 1872, 14 Eq. 227; *Ex p. Sheffield Town Trustees*, 1860, 8 W. R. 602; *Ex p. Earl of Hardwicke*, 1848, 17 L. J. Ch. 422; *cf. Ex p. Richards*, 1890, 25 L. R. Ir. 175).

Discharge
of incum-
brances.

The purchase of a leasehold interest in other estates held on the same trusts is in general regarded as the discharge of an incumbrance, and the costs are not payable by the company; only the costs of obtaining the fund out of Court are allowed (*Re M. S. & L. Ry. Co.*; *Ex p. Corp. of Sheffield*, 1855, 21 Beav. 162; *cf. Ex p. Corp. of Lon-*

Section 80. *don*, 1868, 5 Eq. 418). But the rule is different in the case of a purchase under this Act and the Episcopal and Capitular Estates Act, 1851, and the company pay the costs of the application of the money in buying up a lease of other lands belonging to the see (*Ex p. B. of London*, 1860, 2 D. F. & J. 14; *Ex p. Dean of Manchester*, 1873, 28 L. T. 184).

Redemp-
tion of
land tax.

The application of purchase money to the redemption of land tax has been allowed and the costs thrown on the company, either on the ground that it is a re-investment in land within sect. 69 (*Re L. B. & S. C. Ry. Co.*, 1854, 18 Beav. 608); or that it is an investment within the intention of the Act (*In re Bethlem Hospital*, 1875, 19 Eq. 457; *Ex p. St. Katharine's Hospital*, 1881, 17 C. D. 378; *Ex p. Beddoes*, 1854, 2 Sm. & G. 466).

Proceeds
of lease-
holds in-
vested in
freeholds.

On the petition of all parties interested, a railway company were ordered to pay the costs of a re-investment in freeholds of the proceeds of leaseholds, this being substantially a settlement upon the like uses (*Re Parker's Estate*, 1872, 13 Eq. 495).

Invest-
ment in
building.

Where the purchase money is applied in the erection of new buildings, the costs of obtaining the sanction of the Court and of payment out of the money are payable by the company. It is either a re-investment in land or a payment out (*Re Incumbent of Whitfield*, 1861, 1 J. & H. 610; *Re Lathropp's Charity*, 1866, 1 Eq. 467; *Ex p. Rector of Claypole*, 1873, 16 Eq. 574; *Ex p. Rector of Gamston*, 1876, 1 C. D. 477). And so with respect to rebuilding houses: the company pay only the costs of the petition (*Ex p. Thorner's Charity*, 1848, 12 L. T. O. S. 266; *Ex p. Dean of Canterbury*, 1862, 10 W. R. 505). Formerly sect. 80 was construed more strictly, and the costs of obtaining orders for such purposes were not allowed (*Re Buckinghamshire Ry. Co.*, 1850, 14 Jur. 1065; *Ex p. Melward*, 1859, 27 Beav. 571). The costs will include the costs of evidence that the proposed outlay is beneficial, but not the certificate of the work having been done upon which the money is paid out (*Ex p. Rector of Shipton-under-Wychwood*, 1871, 19 W. R. 549); nor the architect's or surveyor's fees in relation to the contract (*Re Arden*, 1894, 70 L. T. 506; *Re Butchers' Co.*, 1885, 53 L. T. 491).

As to costs upon the erection of temporary hospital accommodation, where a hospital was taken, see *Re St. Thomas's Hosp.* (1863, 11 W. R. 1018); and upon the im-

provement of schools, *Ex p. St. John's Church, Fulham* Section 80.
(1856, 26 L. T. O. S. 173).

The costs payable by the company are limited to such as would be payable by the purchaser under an open contract (*Ex p. Christ's Hospital*, 1875, 20 Eq. 605); and it will be left to the taxing master to settle what such costs are (*Re Temple Church Lands, Bristol*, 1877, 26 W. R. 259; *Re Mason's Trusts*, W. N. 1872, 77). They do not include costs of deducing title and of conveyance (*Ex p. Marquis of Bath*, 1847, 4 Ry. Cas. 567, where the marginal note is wrong). Where the amount to be re-invested is large, the purchaser is entitled at the expense of the company to have the advice of his own counsel on points of difficulty, but not to lay the whole abstract before him when it also goes before the conveyancing counsel of the Court (*Re Jones' S. E.*, 1858, 6 W. R. 762). The surveyor may be paid by a commission on the amount of the purchase money (*A.-G. v. Drapers' Co.*, 1869, 9 Eq. 69).

Costs of purchase.

In general the company will not pay costs of an extraordinary nature necessitated by peculiarities in the purchaser, or in the land taken; or by defects in the vendor's title (*Jones v. Lewis*, 1848, 1 De G. & Sm. 245). Thus, where the purchase money belongs to a charity and a new scheme is necessary for the purpose of the proposed re-investment, the costs, so far as they are increased by the necessity for a scheme, do not fall on the company (*Re St. Paul's Schools*, 1883, 52 L. J. Ch. 454). And upon a re-investment in charity lands the company are not required to pay the costs of a petition under Sir Samuel Romilly's Act (The Charities Procedure Act, 1812; *Ex p. the Incumbent of Alsager*, 1854, 2 W. R. 324). Similarly upon a purchase of copyholds the company do not pay a fine, though they pay the fees on admission (*Ex p. Vicar of Saucston*, 1858, 6 W. R. 492). Nor does the company pay the costs of proceedings for getting in the legal estate where the vendor has died since the contract (*Armitage v. Askham*, 1855, 1 Jur. N. S. 227); though the company pay the costs of a petition on this question of costs (S. C.). But the company, when taking lands belonging to a charity, must pay the costs of enrolling the conveyance of substituted lands under the Mortmain Acts (*Ex p. Christ's Hospital*, 1864, 4 N. R. 14). And the company pay the costs of a petition in an action relating to the land which is being purchased, where such petition is a necessary step in the purchase (*Carpmael v. Proffitt*, 1853, 23 L. J. Ch. 165; *infra*, p. 241).

Extraordinary costs.

Section 80.**Scale fee.**

The purchaser's solicitor is entitled to charge the scale fee, the exception in r. 11 of Sched. I., Part I., of the Remuneration Order with respect to sales under the L. C. A. not being applicable to the case of re-investment of the purchase money (*Re Merchant Taylors' Co.*, 1885, 30 C. D. 28).

Costs where purchase completed previously to reference.

A purchase completed previously to a reference to the master does not come under the Act, so as to entitle to costs, although afterwards approved by the master (*Ex p. Bouverie*, 1848, 5 Ry. Cas. 431).

Abortive purchase.

Where a proposed re-investment in land falls to the ground, owing to a defect in the vendor's title, or owing to the expense necessary to perfect the title, these being matters of which the intending purchaser can have no cognizance until after the approval by the Court of the proposed purchase and after the reference as to title, the company must pay the costs; but not if costs are incurred in relation to a proposed purchase not sanctioned by the Court (*Re Carney's Trusts*, 1872, 20 W. R. 407; *Ex p. Rector of Holywell*, 1865, 2 Dr. & Sm. 463; *Ex p. Vaudrey's Trusts*, 1861, 3 Giff. 224; *Re Woolley's Estate*, 1853, 17 Jur. 850; *Re Macdonald's Trusts*, 1860, 2 L. T. 168).

Re-investment not approved by Court.

And where the proposed purchase was not approved of by the Court as being unsuitable, the company's costs were ordered to be paid out of the fund (*Re Hardy's Estate*, 1854, 18 Jur. 370; *Ex p. Stevens*, 1851, 15 Jur. 243).

Prosecution of inquiries as to title to a certain extent only.

Where the purchaser had prosecuted the inquiries as to title to a certain extent, and then abandoned them, the costs were thrown on him (*Ex p. Copley*, 1858, 4 Jur. N. S. 297).

Several applications for re-investment.

If it is for the benefit of the parties that the money in Court should be invested in distinct purchases, the Court will direct the costs of several re-investments to be paid by the company (*Re St. Bartholomew's Hospital*, 1859, 4 Drew. 425; *Re Hereford, &c. Ry. Co.*, 1864, 13 W. R. 134; *Brandon v. Brandon*, 1863, 9 Jur. N. S. 11; *Re Merchant Taylors' Co.*, 1847, 10 Beav. 485, where a fourth re-investment was allowed; and *Ex p. St. Katharine's Hospital*, 1881, 17 C. D. 378, where the purchase money was 125,000*l.*, and the costs of a sixth application for re-investment were allowed, the sum of 38,440*l.* being then still uninvested; see *Ex p. Fishmongers' Co.*, 1862, 7 L. T. 668; *Ex p. Bouverie*, 1846, 4 Ry. Cas. 229; *Jones v. Lewis*, 1850, 2 Mac. & G. 163).

Money

Where the applicant adds other money to that in Court

for the purpose of a purchase, the company pay only such costs as would have been incurred in laying out the sum in Court (*Ex p. King's College, Cambridge*, 1852, 5 De G. & Sm. 621; *Re Loreband's S. E.*, 1860, 30 L. J. Ch. 94; *Ex p. Hodge*, 1848, 16 Sim. 159; *Re Branmer's Estate*, 1849, 14 Jur. 236; see *Ex p. Mayor of Carlisle*, 1852, 1 W. R. 103; *Ex p. Tetley*, 1845, 4 Ry. Cas. 55). Where it was proposed to use the money in Court under the L. C. A. in making up the purchase money of a purchase authorized in an action, the Court only allowed the costs of the application (*Re Bagot's S. E.*, 1866, 14 W. R. 471; but see *Ex p. Perp. Curate of Bilston*, 1889, 37 W. R. 460, referred to *infra*, p. 245).

Section 80.
added to
fund in
Court

4. Costs of Orders for payment of dividends.

As a general rule the company pay the costs of obtaining fresh orders for the payment of dividends occasioned by a transmission of interest (*Re Lye's Estates*, 1866, 13 L. T. 664). Thus upon the death of the tenant for life the company pay the costs of an application for payment of the dividends to the next person entitled (*Re Jolliffe's Estate*, 1870, 9 Eq. 668). But it is otherwise where a fresh order is rendered necessary by the acts of the parties, and the company have been exempted from paying costs where the order was required in consequence of the resettlement of the fund by the person entitled (*Re Pick's Settlement*, 1862, 10 W. R. 365); or of a transfer of a mortgage on the interest of the tenant for life (*Re Byron*, 1859, 5 Jur. N. S. 261).

Transmis-
sion of
interest.

An order for payment of dividends to trustees should not mention their names, but should direct payment to the trustees for the time being. If the trustees are mentioned by name, a fresh order will be necessary upon a change in the trust, but it is doubtful whether the costs will be thrown upon the company. This was not done in *Re Audenshaw's School* (1863, 1 N. R. 255) and *Re Pryor's Settlement Trusts* (1876, 35 L. T. 202), it being said that both parties were equally to blame; it was done in *Re Goe's Estate* (1854, 3 W. R. 119), and *Re Met. Ry. Co. & Maire* (W. N. 1876, p. 245; see *Re Bazett's Trustees*, 1850, 16 L. T. O. S. 279).

Trustees.

Where payment had been ordered to an executrix, and the executrix afterwards married, a petition for payment

Marriage
of exe-
cutrix.

Section 80. to her husband was held to have been needlessly served on the company, and the petitioners had to pay their costs (*Ex p. Hordern*, 1848, 2 De G. & S. 263).

Lunatic. In a case of lunacy the necessity for successive orders under the L. C. A. dealing with payment of dividends to successive committees has been obviated by carrying the dividends to the credit of the lunacy; on future applications accordingly the company need not be served (*Re Ryder*, 1887, 37 C. D. 595).

New order required by circumstances not under control of applicant. The company, however, will pay the costs where the new order is not due to matters under the control of the original applicants. Thus where an order had been made for payment of dividends to the trustees of a charity, and a fresh order was required in consequence of a new scheme for the charity, such new scheme not having become necessary through any act of the trustees of the charity, the costs of the second petition were payable by the company (*Re Shakespeare Walk School*, 1879, 12 C. D. 178).

Incumbent. Bishop. As to payment to new incumbent, see *Ex p. Incumbent of Guilden Sutton* (1856, 8 D. M. & G. 380); and to bishop, see *Ex p. Ecc. Comm.* (1870, 39 L. J. Ch. 623).

5. Costs of Orders for payment out.

Costs of making title. Where an order is made for payment out of Court, the costs payable by the promoters include costs incurred by the claimant in establishing his title to payment, unless these are excluded as being costs of adverse litigation. Thus, if it becomes necessary to take out administration to a deceased person (*Re Lloyd & N. London Ry. (City Branch) Act*, 1861, 1896, 2 Ch. 397, following *Ex p. Kelly*, 1893, 31 L. R. Ir. 137, and *Ex p. Rorke*, 1894, 1 Ir. R. 146); or to execute a disentailing deed (*Brooking v. S. Devon Ry. Co.*, 1859, 2 Giff. 31); these costs are payable by the company. But the order will not make any special direction as to costs, leaving these to be dealt with in the first instance by the taxing master (*Ex p. Allen*, 1881, 7 L. R. Ir. 124). The costs of preparing and verifying the execution of a power of attorney from parties residing in Jersey to draw purchase money out of Court are chargeable against the company (*Re Godley*, 1847, 10 Ir. Eq. Rep. 228).

Exercise of power of appoint- Where land subject to the trusts of a settlement is compulsorily taken by a railway company and the purchase

money paid into Court, the costs of dealing with the property according to the trusts of the settlement after payment in, not occasioned by anything in the nature of adverse litigation, are payable by the company—where, for instance, after the land is taken, a power of appointment is exercised, and petitions are presented by the appointees for payment out (*Re Brooshoof's Settlement*, 1889, 37 W. R. 744).

Section 80.
ment after
land
taken.

Where, for obtaining payment out of Court, trustees are appointed for the purpose of the S. L. Acts, and the appointment refers to other settled property as well, the costs of appointing the trustees are not payable by the company (*Re Waterford, &c. Ry. Co.*; *Ex p. Harlech*, 1896, 1 Ir. R. 507).

Appoint-
ment of
trustees
affecting
other pro-
perty.

The fact that orders have been previously made at the expense of the company for payment of dividends to a tenant for life does not prevent the Court from ordering the company to pay the costs of an application by the tenant for life for payment out of Court of the *corpus* to trustees appointed under the S. L. A. 1882 (*Ex p. Haberton*, 1893, 31 L. R. Ir. 258; not following *Ex p. Richards*, 1890, 25 L. R. Ir. 175).

Previous
orders for
payment
of divi-
dends.

A transfer of the fund to another account quite separate from the L. C. A. is equivalent to a payment out, and the company will pay the costs of a petition for this purpose (see *A.-G. v. St. John's Hospital, Bath*, 1893, 3 Ch. 151). And, provided the names of the promoters no longer appear in the heading of the account, they are not liable for the costs of a subsequent dealing with the fund, and should not be served with proceedings for this purpose. The jurisdiction to make the company pay costs ceases when the money is altogether removed from their control (see *Fisher v. Fisher*, 1874, 17 Eq. 340; *Brown v. Fenwick*, 1866, 14 W. R. 257). Similarly, where the purchase money was paid into Court in a cause to the credit of a settled estate, this payment discharged the fund from the jurisdiction under the L. C. A., and service on the company of a petition for payment out was improper (*Prescott v. Wood*, 1868, 37 L. J. Ch. 691; *Nock v. Nock*, W. N. 1879, 125).

Transfer
to credit of
action.

But to preserve the jurisdiction of the Court to make the company pay the costs of a subsequent re-investment, it is not necessary that the name of the L. C. A. or of the special Act should appear in the heading of the account to

Section 80. the credit of which the fund is transferred. It is sufficient if it contains the words "*Ex parte the promoters*" (specifying them) (*Drake v. Greaves*, 1886, 33 C. D. 609).

Transfer to account of official charity trustees.

A petition by trustees of a charity for the transfer of the fund to the account of "The Official Trustees of Charitable Funds" is equivalent to a petition for payment out of Court, and the purchasers must pay the costs (*Re Bristol Free Grammar School*, 1878, 47 L. J. Ch. 317; *Re Rector of St. Albans, Wood Street*, 1892, 66 L. T. 51); but not the costs of a subsequent re-investment (*Ex p. Bishop Monk's Horfield Trust*, 1881, 29 W. R. 462).

Costs of unsuccessful application.

Where an application for payment out is unsuccessful, the petitioner may be ordered to pay the costs of the company (*Re Smith*, 1888, 40 C. D. p. 394). As to costs of a petition which succeeds where previous petitions have been dismissed without costs, see *Ex p. Winder* (1877, 6 C. D. p. 705).

6. Persons to be served.

Tender of costs.

In serving any person with the summons or petition it should be considered whether his appearance is necessary. If it is, the costs of his appearance will be included in the costs payable by the company (*Re Burnell*, 1864, 10 Jur. N. S. 289). Should it, however, be thought that his appearance is not necessary, the proper course is to tender him with the petition a sum of two guineas to enable him to consult a solicitor. If this is not done, he is entitled to appear, and if the appearance is in fact not necessary, the petitioner pays his costs (*Wood v. Boucher*, 1870, 6 Ch. 77; see *Clark v. Simpson*, 1868, 6 Eq. 336; *Somes v. Martin*, W. N. 1882, p. 113). If the tender is made, and the respondent afterwards appears, the Court will consider whether the appearance is justified or not. If it is justified, the respondent will have his costs (*Re Duggan's Trusts*, 1869, 8 Eq. 697).

The company.

The company ought not to be made co-petitioners, though this is done to save expense. They ought to be made respondents and served in the usual way (*Re Charity of King Edward VI., Saffron Walden*, 1868, 37 L. J. Ch. 664). And if an order for costs is asked against the company, service on the company is essential.

In *Ex p. Rector of Kirkby Overblow* (1850, 19 L. J. Ch. 329) service on the company of a petition for re-investment

in land was dispensed with, but it does not appear how the costs were dealt with. Section 80.

Where money is to be dealt with in a manner not sanctioned by the Act, and the company are made parties to the petition, they will, apparently, have their costs (*Ex p. Vicar of Kidderminster*, 1859, 7 W. R. 482).

Where a married woman petitions for interim investment and payment of dividends, and it is necessary for the husband to be a party, he should be made a co-petitioner, and his costs of appearing as a respondent will not be allowed against the company (*Re Osborne's Estate*, W. N. 1878, p. 179). Married woman.

Under the Rules in Lunacy the masters determine which, if any, of the next of kin of a lunatic, and what other persons, if any, are to attend any particular proceeding in the lunacy (r. 40 of Rules of 1892). But, in general, the heir at law (*Re Walker*, 1851, 7 Ry. Cas. 129) and the next of kin of the lunatic are proper parties to an application under this Act, and the costs must be paid by the company (*Re Briscoe*, 1864, 2 D. J. & S. 249). Lunatic.

Upon petition for interim investment and payment of the dividends to the tenant for life the remainderman should not be served (*Re Dowling's Trusts*, 1876, 24 W. R. 729; *Re Finch's Estate*, 1866, 14 W. R. 472); nor should he be served with a petition by the tenant for life for re-investment in the purchase of land (*Ex p. Staples*, 1852, 1 D. M. & G. 294; *Re Legge's Estate*, 1860, 8 W. R. 559; *Re Bowes' Estate*, 1864, 4 N. R. 315); or for the application of the money in the purchase of a tithe rent charge issuing out of the settled lands (*Ex p. Lord Leconfield*, 1874, Ir. R. 8 Eq. 559, where the remainderman was an infant). But he should be served if the proposed application of the money is of an extraordinary nature, such as the rebuilding of houses on the estate (*Re Leigh's Estate*, 1871, 6 Ch. 887, p. 890, n.; though see *Re Aldred's Estate*, 1882, 30 W. R. 777, *supra*, p. 191); or where questions may arise between tenant for life and remainderman; where, for instance, an apportionment has to be made under sect. 74 (*Re Crane's Estate*, 1869, 7 Eq. 322), or the money is to go to the tenant for life himself in reimbursement of incumbrances which he has paid off (*Re Romney*, 1863, 3 N. R. 287). In such cases the costs of an appeal will not be thrown on the company (*Re Leigh's Estate*, 1871, 6 Ch. 887, 893). Remaindermen.

It has been held that trustees in whom the immediate Trustees.

Section 80. freehold of the lands taken was vested are entitled to appear upon a petition for interim investment and payment of dividends to the tenant for life (*Re Finch's Estate*, 1866, 14 W. R. 472); and trustees have been allowed their separate costs of appearing upon a petition for investment (*Re D. of Cleveland's Harte Estate*, 1860, 1 Dr. & Sm. 46), or for payment out to a *cestui que trust* who has become absolutely entitled (*Ex p. Met. Ry. Co.*, 1868, 16 W. R. 996; *Re Burnell's Estate*, 1864, 12 W. R. 568). And as to payment of dividends, see also *Henniker v. Chafy* (1865, 35 Beav. 124). But trustees, as well as remaindermen, should not appear unnecessarily (*Wilson v. Foster*, 1859, 26 Beav. 398), and it is safer in such cases for the petitioner to make the tender of 40s. and leave the trustees to consider whether they have such an interest as to justify an appearance (see *Re Pattison's Estates*, 1876, 4 C. D. 207; *Re Bowes' Estate*, 1864, 4 N. R. 315; *Re Legge's Estate*, 1860, 8 W. R. 559).

Cestui que trust.

Where trustees are applying for payment out, the petition need not be served on the *cestui que trusts* (*Re East*, 1853, 2 W. R. 111).

Incumbrancers.
(i) Re-investment in land.

When there is a petition simply for re-investment in land, and there are mortgagees or annuitants whose rights are not otherwise affected by the petition, the proper course is to serve such mortgagees or annuitants with a copy of the petition, and to pay them 40s. for costs, giving them at the same time an intimation that if they appear at the hearing they will probably have to pay their own costs (per James, L. J., in *Re Gore-Langton's Estates*, 1875, 10 Ch. p. 333, overruling *Re Brooke*, 1861, 30 Beav. 233, and apparently *Re Peyton's Settlement*, 1856, 4 W. R. 380; see *Re Morris's S. E.*, 1875, 20 Eq. 470).

(ii) Payment out.

Similarly, upon a petition for payment to mortgagees out of the fund in Court, or for payment of the fund out of Court with their consent, a sum of 42s. should be tendered for their costs of taking advice on the petition, and the company will have to pay this amount and also the costs of an affidavit of service of the petition on the incumbrancers (*Re Halstead United Charities*, 1875, 20 Eq. 48; *Ex p. Jones*, 1880, 14 C. D. 624; *Re Hatfield's Estate*, 1861, 29 Beav. 370; *Re Hatfield's Estate* (No. 2), 1863, 32 Beav. 252; see *Re Hungerford's Trusts*, 1855, 1 K. & J. 413; *Re Yeates*, 1848, 12 Jur. 279); or perhaps 30s. with the costs of the affidavit is sufficient (*Re Ruck's Trusts*, 1895, 13 R. 637).

See also as to payment to mortgagees, *Re Waterford, &c. Ry. Co.*, 1877, Ir. R. 11 Eq. 321; as to payment of legacies charged on the land sold, *Re Turner's Estate*, 1854, 2 W. R. 441; and as to payment to a creditor of the person entitled, *Re Sinclair*, 1867, 16 L. T. 474. Section 80.

When the application is for interim investment and payment of dividends to the tenant for life, mortgagees of the interest of the tenant for life (*Ex p. Smith*, 1849, 6 Ry. Cas. 150; *Re Webster's S. E.*, 1854, 2 Sm. & G. App. vi.; *Re Hungerford's Estate*, 1857, 3 K. & J. 455; *contra, Re Smith*, 1866, 14 W. R. 218), or prior to the life estate (*Re Morris's S. E.*, 1875, 20 Eq. 470), should not be served, provided the tenant for life is in possession. If they are served, they can add their costs to their debt (*Re Thomas's Estate*, 1864, 10 Jur. N. S. 307). But if the petitioner is out of possession when the land is sold, the incumbrancer should be served (*Re Hungerford*, 1857, 3 K. & J. 455). In *Re Nash* (1855, 1 Jur. N. S. 1082), where the life estate had been mortgaged for the benefit of creditors, and a receiver appointed, the costs of the appearance of the receiver and the mortgagees, upon a petition for interim investment and payment of dividends either to the tenant for life or the receiver, were directed to be paid by the company. (iii) Interim investment and payment of dividends.

A right of re-entry for rent in arrear is in the nature of an incumbrance on the leasehold interest, so that the company must pay the costs of the appearance of the lessor on a petition by the lessee for payment out of Court of the sum paid in in respect of such interest (*Re London Street, Greenwich*, 1887, 57 L. T. 673; see *infra*, p. 320). Lessor with right of re-entry.

Where a person interested in the money mortgages his interest after the money is paid into Court, and a petition by him for payment out is served on the mortgagee, the company pay the costs of the mortgagee (limited to 42s.), and also the costs (if any) of an affidavit of service on the mortgagee (*Re Olive's Estate*, 1890, 44 C. D. 316; dissenting from *Re Gough's Trusts*, 1883, 24 C. D. 569; and *Re Jones' Trust Estate*, 1870, 18 W. R. 312). Incumbrance created after payment in.

Where glebe lands are taken, and under the special Act the purchase money is to be invested on the petition of the vicar and patron, and with the consent of the bishop, the company must pay the costs of the bishop's appearance (*Ex p. Vicar of Creech St. Michael*, 1852, 21 L. J. Ch. 677). Glebe lands.

On a petition by an incumbent for the application of

Section 80. money paid for purchase of glebe land in building a vicarage house, part of the expense being borne by the governors of Queen Anne's Bounty, the costs of the governors were ordered to be paid by the petitioner, since they arose out of circumstances not due to the company (*Re Incumbent of Whitfield*, 1861, 1 J. & H. 610).

Freemen. Where the lands taken belong to a municipal corporation, the freemen ought to be represented upon an application for the final disposal of the purchase money (*Re G. N. Ry. Co.'s Act; Ex p. M. of Lincoln*, 1852, 6 Ry. Cas. 738).

Person whose interest has ceased. A person whose name appears in the title of the account, but who has ceased to have any interest, should be served with the petition but should not appear (*Re Justices of Corentry*, 1854, 19 Beav. 158; and see *Re Prebend of St. Margaret, Leicester*, 1864, 10 L. T. 221, where a prebend whose land had been taken, but whose estates had become vested in the Ecclesiastical Commissioners, was not allowed the costs of appearance).

Official solicitor. If, owing to the fund having remained dormant for many years, it becomes necessary to serve the official solicitor with an application for payment out, his costs are not payable by the company, but by the person through whose default the necessity for service on him has arisen (*Re Clarke's Estate*, 1882, 21 C. D. 776).

Official charity trustees. Where the land taken was charity land vested in the Official Trustee of Charity Lands, and under the scheme of the charity all securities were to be transferred to the Official Trustees of Charitable Funds, a petition for interim investment, and for carrying over the investment to the account of the last-named trustees, was properly served on both sets of official trustees (*Re Stafford's Charity*, 1887, 57 L. T. 846).

Ecclesiastical Commissioners, &c. Where the consent of the Ecclesiastical Commissioners is required for the dealing with the fund in Court, they should not be served, but their consent should be obtained out of Court and proved (*Ex p. Bishop of London*, 1860, 2 D. F. & J. 14); and it is the same apparently where the mere consent of the Charity Commissioners is required (see *Re Furversham Charity*, 1862, 10 W. R. 291).

Vendors of substituted lands. On a petition for re-investment in land, the proposed vendors should not be served (*Re Dylar's Estate*, 1855, 19 Jur. 975). Though where the land to be purchased is the subject-matter of an action, the costs of obtaining the sanction of the Court to the sale by a petition in that

action were thrown on the company, and it was held that all the parties to the action were entitled to be served (*Carpmael v. Profitt*, 1853, 23 L. J. Ch. 165). Section 80.

Where land which is taken under the L. C. A. is the subject of an administration action, the service of the notice to treat may make it necessary for proceedings to be taken in the action to obtain the direction of the Court, and in general all the parties to the action will appear upon such proceedings. The costs of the proceedings, including the costs of all the parties to them, are occasioned by the company taking the land, and are payable by the company (*Haynes v. Barton*, 1861, 1 Dr. & Sm. 483, 496; *Henniker v. Chafy*, 1860, 28 Beav. 621; *Picard v. Mitchell*, 1850, 12 Beav. 486). Where land taken is subject of action.

Where the land has been taken and the purchase money is in Court, it is a question of some doubt how far the company is liable to pay the costs of all parties to the cause appearing on a petition for transfer to the credit of the cause or for re-investment in land. The current of authority is in favour of imposing these costs upon the company. In applications for transfer to the credit of the cause this has been done in *Dinning v. Henderson* (1848, 2 De G. & Sm. 485); *Re Hull & Selby Ry. Co.* (1848, 5 Ry. Cas. 458); *Henniker v. Chafy* (*supra*); *Paterson v. Paterson* (1864, 3 N. R. 657); and so, too, where the action is instituted after the payment into Court (*Patten v. Gatty*, 1852, 1 W. R. 219 n, cited 1 Dr. & Sm. p. 491). Upon applications for re-investment in land it has been done in *Haynes v. Barton* (1861, 1 Dr. & Sm. 483, where the earlier cases were reviewed by Kindersley, V.-C.), *Re Brandon's Estate* (1862, 2 Dr. & Sm. 162), and in *Bradshaw v. Fane* (1862, 1 N. R. 159). Purchase money in Court.

On the other hand, in *Re Picton's Estate* (1853, 3 W. R. 327), upon an application for transfer to the credit of the cause, it was held that the company ought to pay the costs of the petitioners, but not of the other parties; and in *Sidney v. Wilmer* (1862, 31 Beav. 338) it was held that the company ought to pay only the costs of service on parties other than the petitioners, not of their appearance. And in *Wilson v. Foster* (1859, 26 Beav. 398), upon an application for re-investment in land, the costs only of service on the remainderman and trustees were allowed. In the earlier case of *Hore v. Smith* (1849, 14 Jur. 55), where an annuitant, whose annuity was in arrears, petitioned for the

Section 80. sum in Court to be paid out to him, the costs of the parties other than the petitioner were directed to be costs in the cause. "If a company," said Romilly, M. R., in *Sidney v. Wilmer*, "by taking land renders it necessary to make an application in a cause, whereby expenses are incurred, the company must pay them. But if, on an application to invest the fund, the parties to a suit are served and appear, having no objection to make to the order asked, they must pay their own costs of appearance, for they ought not to appear." In *Eden v. Thompson* (1864, 2 H. & M. 6), where the application was for transfer to the credit of the cause, Page Wood, V.-C., allowed the costs of appearance of all parties, but intimated that in such cases the applicant alone should appear.

In this state of authorities it would seem that the prudent course is for the petitioner to make a tender of 42s. to the other parties to the cause and leave them to appear at their own risk. In the recent case of *Re English's Settlement* (1888, 39 C. D. 556), however, North, J., followed *Haynes v. Barton* and *Henniker v. Chafy* in preference to *Sidney v. Wilmer*, and allowed the costs of a trustee who was the defendant in the action, one of the applicants being the plaintiff.

7. Applications where several persons entitled.

Several persons entitled to share in fund.

A person entitled to an aliquot share of the fund in Court can apply for payment of such share without notice to the other parties interested (*Re Midland Ry. Co.*, 1847, 11 Jur. 1095; see *Re Clarke's Devises*, 1858, 6 W. R. 812); and if such other parties are served and appear, the company will not be liable to pay their costs (*Melling v. Bird*, 1853, 22 L. J. Ch. 599). But upon an application by one person entitled, which has for its object a disposition of the entire fund, other persons entitled may appear, and will have their costs allowed, provided this is not done vexatiously (*Re Braye*, 1863, 11 W. R. 333).

Prima facie, said Kindersley, V.-C., in the case just cited, the company must pay the costs of all parties properly served for the purpose of getting the order sought; but there is the exception, quite consistent with this, that if the parties who might and ought to have appeared

together, oppressively and vexatiously appear separately, and thereby increase the costs, the Court will not give those costs against the company; and he distinguished *Ex p. Braye* from *Melling v. Bird* (cf. *Haynes v. Barton*, 1861, 1 Dr. & Sm. at p. 495). In *Re Spooner's Estate* (1854, 1 K. & J. 220) the company were required to pay the costs of two petitions by two co-heirs who traced their pedigrees under different individuals, but not the costs occasioned by the affidavits of the petitioners in opposition to adverse claims to the fund. Section 80.

Where the land is held in undivided shares, each part owner *bonâ fide* employing a separate solicitor is entitled to his costs of obtaining his share of the purchase money; but two or more of such part owners employing the same solicitor are, in the absence of special circumstances, entitled to only one set of costs (*Re Nicholls' Trust Estates*, 1866, 35 L. J. Ch. 516). Employment of separate solicitor.

Where lands devised in trust for many persons in aliquot shares were taken, and the purchase money paid into Court, upon petition by the surviving trustee and four of the *cestui que trusts* for payment out, to which the remaining *cestui que trusts* were respondents, and appeared by four separate counsel, the company was ordered to pay their costs, except in the case of one who had originally been a co-petitioner (*Re Long's Trust*, 1864, 12 W. R. 460). Separate counsel.

8. Same person entitled to different funds.

Where the same person is entitled under distinct titles to different parts of a fund in Court, or is entitled to separate funds paid in by different companies, applications for dealing with the fund or funds should be made on one summons or petition; whether the object is the payment of dividends (*Re Lord Broke's Estate*, 1863, 11 W. R. 505; see *Re Mid. G. W. Ry. Co.*, 1881, 9 L. R. Ir. 16); or re-investment in land (*Re Gore Langton's Estates*, 1875, 10 Ch. 328); or payment out (*Re Pattison*, 1876, 4 C. D. 207). Same person entitled to different funds.

Section 80.**9. Lands taken by different companies.**

Lands of
same
owner
taken by
several
com-
panies.
Costs
divided
equally,
except
ad valorem
stamp and
surveyor's
fee.

Where money has been paid in by several companies the costs of re-investment in land or of payment out are as a general rule borne in equal shares by all the companies, with the exception, in the case of re-investment, of the *ad valorem* stamp and the surveyor's fee, which are divided rateably (*Ex p. B. of London*, 1860, 2 D. F. & J. 14; *Ex p. Corp. of London*, 1868, 5 Eq. 418; *Re Leigh's Estate*, 1871, 6 Ch. 887, 893; *London & Brighton Ry. Co. v. Shropshire Union Ry. Co.*, 1856, 23 Beav. 605. In *Ex p. Corp. of Sheffield*, 1855, 21 Beav. 162, the costs were apportioned according to the sums in Court). And so where only a portion of the sum paid in by one company, and the whole of the sum paid in by another company are invested (*Ex p. Trinity College*, 1868, 18 L. T. 849; *Re Merton College*, 1863, 33 Beav. 257, on app. 1 D. J. & S. 361). Where some of the companies have been amalgamated, the amalgamated company counts, for the purpose of the rule, as one company, and the costs are divided between it and the remaining companies equally (*Ex p. Gaskell*, 1876, 2 C. D. 360; *Ex p. Corpus Christi College*, 1871, 13 Eq. 334; *Re Mid. G. W. Ry. Co.*, 1881, 9 L. R. Ir. 16; *Re Maryport, &c. Ry. Act*, 1863, 32 Beav. 397, *contra*, has not been followed). But one company which has leased its line to another is treated as a separate company (*Re Carlisle, &c. Ry. Co.*, 1864, 33 Beav. 253). If some of the companies are not liable to pay costs, the remainder, nevertheless, only pay their aliquot share, as if all were paying (*Ex p. Ecc. Comm.*, 1865, 13 W. R. 575; where, out of seventeen companies, four were not liable, and the remainder paid a seventeenth each). But if part of the fund has been paid in by the Crown the rule is different, and the companies pay between them all the costs except so far as they are increased by the Crown's contribution (*A.-G. v. Mayor of Rochester*, 1867, 15 W. R. 765; see *Ex p. Hodge*, 1848, 16 Sim. 159; *supra*, p. 233).

Relaxa-
tion of
rule.

But while the rule as to equality of division of costs is to be followed in the absence of peculiar circumstances of hardship (*Re Byron's Estate*, 1863, 1 D. J. & S. 358; *Re Merton Coll.*, *supra*), and will not be departed from on the ground of mere inequality of funds; yet it is relaxed in cases of oppression: where, for instance, a particular company has been brought frequently before the Court for the

investment of small instalments (*Ex p. Christ's Hospital*, 1864, 2 H. & M. 166); or where there is great inequality in the amounts. The scale fee payable on the purchase is then, with the *ad valorem* stamp duty and the surveyor's fee, apportioned rateably (*Re Bishopsgate Foundation*, 1894, 1 Ch. 185; *Ex p. St. Bartholomew's Hosp.*, 1875, 20 Eq. 369); but not necessarily the costs of the petition (*Ex p. Christ Church*, 1861, 9 W. R. 474). Section 80.

For a case of apportionment of costs where one of two funds in Court, subject to the same trusts, was the purchase money of glebe land taken by a railway company and the other had arisen from the grant of mining leases of the glebe under a private Act, see *Ex p. Perp. Curate of Bilston* (1889, 37 W. R. 460). Appor-
tionment
where one
fund not
under
L. C. A.

10. Costs of adverse litigation.

The words in sect. 80 "except such as are occasioned by litigation between adverse claimants" refer to "costs," and not to the next antecedent "proceedings" (*Re Cant's Estate*, 1859, 1 D. F. & J. 153).

Costs of administering the fund, including the costs of ascertaining the proper mode of distribution, are not costs of "adverse litigation" and they fall on the company:— Costs of
adminis-
tration.

Where difficulties occur, and expense is incurred in ascertaining the rights and shares of the parties entitled to the money, these are not costs occasioned by adverse litigation (*Re Singleton's Estate*, 1863, 11 W. R. 871). Ascertain-
ment of
parties
entitled.

The company pay the costs of administration as distinguished from hostile litigation; hence of obtaining the construction of a will on which the rights to the fund depend (*Re Gregson's Trusts*, 1864, 2 H. & M. 504, p. 514; *Re Hinks' Estate*, 1853, 2 W. R. 108; see *Re Noake's Will*, 1880, 28 W. R. 762). Construc-
tion of
will.

And where the land taken is subject to a mortgage, the company pay the costs of an inquiry as to the amount due on the mortgage (*Re Bareham*, 1881, 17 C. D. 329; *cf. Ex p. Collins*, 1849, 19 L. J. Ch. 244; *Re Hore's Estate*, 1849, 5 Ry. Cas. 592). It is everyday practice to order the company to pay the costs of class inquiries which are necessary for the purpose of distributing the fund (*S. C.*, per Jessel, M. R. p. 333). Mortgage
inquiry.

Class
inquiry.

A contest between tenant for life and remainderman as to the division of the fund is not adverse litigation. Question
between
tenant for

Section 80. “ Adverse litigation arises where different parties set up adverse titles to the estate. Here the title was not in dispute, and these costs are costs arising in the course of administering the purchase money under the Act, and ought to have been paid by the corporation ” (*Askew v. Woodhead*, 1880, 14 C. D. p. 36, per Jessel, M. R.).

Adverse claimants. Where, on the other hand, the claimant's title is doubtful, and he brings before the Court persons interested in disputing his right, this is equivalent to a case of adverse litigation and he must pay the costs. Thus where compensation had been paid in respect of leases but the validity of the leases was disputed, and in order to settle the question it was necessary to bring before the Court the persons interested in the reversions, the company was ordered to pay the general costs of the application for payment out, but the lessee was ordered to pay the costs of the reversioners as being expenses caused by “ adverse litigation ” (*Ex p. Cooper*, 1865, 13 W. R. 364).

And the above rule as to the company paying the costs of administration does not apply when it is not simply a question of ascertaining the persons entitled, but there is an actual dispute as to which of two adverse claimants is to take under a will ; where, for instance, a residuary legatee and the heir each claim the fund in Court (*Ex p. Yates*, 1869, 17 W. R. 872 ; see *Ex p. Styant*, 1859, John. 387).

Where, in consequence of a dispute between the tenant for life and his incumbrancers, a petition for re-investment is presented, but the payment of dividends is left to be dealt with on a second petition, the company will not be ordered to pay the costs of the second petition (*Re Joliffe*, 1857, 3 Jur. N. S. 633).

Incidence of costs not payable by company. Where there are adverse claimants to the fund, the company will pay only one set of costs, and the rest may be ordered to be paid out of the fund (*Re Catling's Estate*, W. N. 1890, p. 75 ; *Ex p. Rector of St. Martin's, Birmingham*, 1870, 11 Eq. p. 30) ; or the unsuccessful claimants may be ordered to pay the petitioner such costs as have been occasioned by their adverse claims (*Ex p. Gt. Southern & Western Ry. Co.*, 1877, Ir. R. 11 Eq. 497).

Withdrawal of adverse claim. If the money is paid into the Bank in consequence of an adverse claim being made, and the claim is subsequently withdrawn, the company are not required to pay the costs of an application for payment out (*Re English*, 1865, 13

W. R. 932, a decision of the Court of Appeal). In *Re Duke of Norfolk's Estates* (1874, 22 W. R. 817), *contra*, *Re English* was not referred to. In *Ex p. Palmer* (1849, 13 Jur. 781), where the claim had necessitated two applications, the costs of both were thrown on the company. Section 80.

If the title is disputed and the company take a conveyance in which both claimants join, it seems that the company must pay the costs of both upon an application for re-investment (*Re Butterfield*, 1861, 9 W. R. 805). Convey-
ance by
both
claimants.

11. Order for and payment of costs.

For form of order for costs under sect. 80, see Seton, 5th ed. p. 2036; *Ex p. Gt. S. & W. Ry. Co.* (1877, Ir. R. 11 Eq. 497). The order for the payment and taxation of costs must follow the words of the Act (*Re Hayward's Estate*, 1863, 9 Jur. N. S. 1222; *Re Edmunds*, 1866, 35 L. J. Ch. 538). Form of
order.

It seems that an order under this section cannot be altered in favour of a company, unless they appeal (*Re Gregson*, 1864, 13 W. R. 193). Appeal.

Under an order for half-yearly sales of stock to make up with dividends the income due to the tenant for life in respect of the taking of leaseholds, and for taxation and payment of costs according to the Act, the costs of each periodical sale can be taxed without a fresh order (*Re Edmunds*, 1866, 35 L. J. Ch. 538). These are costs properly payable by the company (*Re Long's Estate*, 1853, 1 W. R. 226). Costs tax-
able under
order.

Where the money in Court is being re-invested in land, it has been held that the company are entitled to have inserted in the order for payment of costs the words "upon the approval and execution of the conveyance" (*Ex p. Eton College*, 1859, 7 W. R. 710), but this seems to be inconsistent with the cases in which the costs of abortive purchases have been thrown on the company (*supra*, p. 232). Re-invest-
ment in
land.

It was formerly held that in orders directing a company to pay costs, the omission of the usual words "except such costs, if any, as are occasioned by litigation between adverse claimants," ought not to be ordered except in very clear cases (*Re Cant's Estate*, *supra*, p. 245; *Re Courts of Justice Commissioners*, W. N. 1868, 124; see *Re Tookey's* Costs of
adverse
litigation.

Section 80. *Trusts*, 1852, 16 Jur. 708). But it seems that these cases do not correctly state the practice. "It is not, and has not been, the practice to insert the exception as to the costs of litigation between adverse claimants, unless it appears or is suggested that some litigation has taken place" (Seton on Judgments, 5th ed. 2037).

Costs of adverse litigation are usually left in general form to the taxing master, but in a simple case the Court will separate them and direct specifically how the different costs are to be paid (*Re Longworth's Estate*, 1853, 1 K. & J. 1; *Ex p. Gt. S. & W. Ry. Co.*, *supra*).

Payment
of costs
not
ordered
out of
deposit
under
sect. 85.

The section only authorizes an order on the company to pay costs, not an order to pay them out of any particular fund; consequently the Court will not order them to be paid out of money deposited under sect. 85 (*Re Neath, &c. Ry. Co.*, 1874, 9 Ch. 263; *Re Wimbledon, &c. Ry. Act*, 1864, 9 L. T. 703; *Ex p. Sterens, Re London & Southampton Ry. Extension Act*, 1848, 2 Phil. 772; *Ex p. G. N. Ry. Co.*, 1848, 16 Sim. 169); and it is the same although the purchase is abandoned by the company, provided this is done with the concurrence of the owner; but not, apparently, if it is abandoned through inability of the company to complete (*Ex p. Birmingham, &c. Ry. Co.*, 1863, 1 H. & M. 772).

Insol-
vency of
company.

In the event of the insolvency of the company, payment of costs may be ordered out of the fund in Court (*Re Glebe Lands of Gt. Yeldham*, 1869, 9 Eq. 68).

Costs out
of settled
estate.

A tenant for life will be allowed out of the fund all costs properly incurred by him which are not payable by the company (*Re Earl of Berkeley's Will*, 1874, 10 Ch. 56; *Re Leigh's Estate*, 1871, 6 Ch. 887, 893)—but see *Re Strachan's Estate* (1851, 9 Hare 185), where, the costs not falling on the company, the Court declined jurisdiction to apportion them between tenant for life and remainderman—including costs of arbitration incurred by reason of his refusing, *bonâ fide* and under advice, the company's offer (*Re Aubrey's Estate*, 1853, 17 Jur. 874; and so as to an incumbent, *Ex p. Perp. Curate of Whitworth*, 1871, 24 L. T. 126), and costs of negotiations and of surveys previous to the arbitration (*Re Oldham's Estate*, W. N. 1871, p. 190). And where the company abandon some of their notices to treat for parts of a settled estate, but go on with others, and the purchase money is paid into Court, expenses incurred by the tenant for life under the aban-

done notices will be paid out of the fund in Court (*Re* Section 80.
Strathmore Estates, 1874, 18 Eq. 338).

Formerly a tenant for life was not allowed out of the fund in Court the costs of opposing the bill (*Re Earl of Berkeley's Will*, *supra*; but see *Re Ormerod's S. E.*, 1892, 2 Ch. 318); but where the Court approves of the opposition, these may now be paid out of the settled estate under sect. 36 of the S. L. A. 1882. And municipal corporations have a general power of defraying out of the borough funds or rates the expenses of resisting Parliamentary attack (*Att.-Gen. v. Mayor of Brecon*, 1878, 10 C. D. 204; see *Bright v. North*, 1847, 2 Ph. 216).

CONVEYANCES OF LANDS.

And with respect to the conveyances of lands, be it enacted as follows :—

§ 81. Form and Effect of the Conveyance.

§ 82. Costs.

§ 83. Taxation of Costs.

Form and Effect of the Conveyance.

Section 81.

Conveyances may be in forms in schedules, or by deed in any other form. Conveyances in schedule forms to be effectual to vest lands in promoters for all interests for which compensation paid.

LXXXI. Conveyances of lands to be purchased under the provisions of this or the special Act, or any Act incorporated therewith, may be according to the forms in the Schedules (A) and (B) respectively to this Act annexed, or as near thereto as the circumstances of the case will admit, or by deed in any other form which the promoters of the undertaking may think fit; and all conveyances made according to the forms in the said schedules, or as near thereto as the circumstances of the case will admit, shall be effectual to vest the lands thereby conveyed in the promoters of the undertaking, and shall operate to merge all terms of years attendant by express declaration, or by construction of law, on the estate or interest so thereby conveyed, and to bar and to destroy all such estates tail, and all other estates, rights, titles, remainders, reversions, limitations, trusts, and interests whatsoever, of and in the lands comprised in such conveyances, which shall have been purchased or compensated for by the consideration therein mentioned; but although terms of years

be thereby merged, they shall in equity afford the same protection as if they had been kept on foot, and assigned to a trustee for the promoters of the undertaking to attend the reversion and inheritance. Section 81.

In practice it is not customary to employ the forms in the schedules. As to terms, compare the provisions of the Satisfied Terms Act, 1845 (8 & 9 Vict. c. 112).

Costs.

LXXXII. The costs of all such conveyances shall be borne by the promoters of the undertaking; and such costs shall include all charges and expenses, incurred on the part as well of the seller as of the purchaser, of all conveyances and assurances of any such lands, and of any outstanding terms or interests therein, and of deducing, evidencing, and verifying the title to such lands, terms, or interests, and of making out and furnishing such abstracts and attested copies as the promoters of the undertaking may require, and all other reasonable expenses incident to the investigation, deduction, and verification of such title. Section 82.
Costs of conveyances to be borne by promoters, including costs of making title.

“The section does not apply to the costs of ascertaining the property to be conveyed; only to conveyance. The conveyance begins when you have ascertained what is to be conveyed, and then the provision of the Act is that the company are to pay the costs of verifying the title and the expenses of conveyance.” Hence, where the ground landlord had sold to a railway company some of a set of houses let at a gross rent, and the purchase money was to be calculated at so many years’ rent on the houses taken, it was held that the costs of apportioning the ground rent were not payable under this section, though by declining to agree the vendor might get his extra expenses in the shape of compensation (*Re Hampstead Junction Ry.; Ex p. Buck*, 1863, 1 H. & M. 519). Operation of section.

Section 82.

Where conveyance after being prepared is not required.

Un-stamped deeds.

Costs before conveyancing counsel.

Costs of taking out administration.

Conveyance by administrator.

Costs of proceedings to get in legal estate.

The landowner is entitled to the costs of a conveyance which has been prepared, although by reason of the company executing a deed poll the conveyance becomes unnecessary (*Re Crystal Palace Ry. Co., Re Divers*, 1855, 1 Jur. N. S. 995).

Where the title includes unstamped deeds the company are not entitled to have them stamped at the expense of the landowner, at any rate if the landowner can procure a confirmation from the conveying parties (*Ex p. Birkbeck Freehold Land Society*, 1883, 24 C. D. 119).

The costs incurred before conveyancing counsel are payable under this section by the company, and, being liable to taxation, a proper bill of them should be delivered to the company (*Re Spooner's Estate*, 1854, 1 K. & J. 220).

Where the company require that letters of administration shall be taken out to the estate of the landowner, the property taken being leasehold, and the company take an assignment from the administrator, they must bear the costs of taking out the letters of administration (*Re Liverpool Improvement Act*, 1868, 5 Eq. 282; overruling *Re S. Wales Ry. Co.*, 1851, 14 Beav. 418, where it was held that the company were not liable for the costs of proceedings under the Trustee Act to obtain a conveyance from an infant heir).

A. had for more than twelve years been in possession of premises held under a lease for life and a term of years. On the premises being taken by a company under this Act the company required that administration should be taken out to B., the assignee of the lease, through whom A. claimed. C. accordingly took out administration to B., and conveyed her interest as administratrix in the premises to A. It was held, following *Re Liverpool Improvement Act*, that the costs of this conveyance, in addition to the costs of taking out administration, should be borne by the company (*Re Dublin (South) City Market Co., Ex p. Keatley*, 1890, 25 L. R. Ir. 265).

Prior to this Act it was held that the costs of an action against an infant heir of a vendor brought for the purpose of obtaining a conveyance of the legal estate, the vendor having died after notice to treat but before completion, were not payable by the company; inasmuch as the difficulty was caused by the vendor allowing the estate to descend when he knew a conveyance would be necessary (*Mid. Counties Ry. Co. v. Wescomb*, 1840, 2 Ry. Cas. 211;

Mid. Counties Ry. Co. v. Caldecott, 1841, *ibid.* 394; see **Section 82.**
L. & S. W. Ry. Co. v. Bridger, 1864, 12 W. R. 948); but this rule has not prevailed under this Act. The sale, even where it is by agreement, ranks as a compulsory sale, so that the heir or devisee is a constructive trustee within the Trustee Acts (*Re Russell's Estate*, 1866, 12 Jur. N. S. 224; *Re Lowry's Will*, 1872, 15 Eq. 78), and the costs of obtaining a vesting order under the Trustee Act, 1893, are payable by the company (*Re Manchester & Southport Ry. Co.*, 1854, 19 Beav. 365; *cf. Re Rees' Devisees*, 1852, 21 L. J. Ch. 687). And similarly where the assistance of the Court is required in order to get in the legal estate from the heir of a deceased mortgagee (*Re Eastern Counties Ry. Co., Ex p. Care*, 1855, 26 L. T. O. S. 176; *Re Nash's Estate*, 1855, 4 W. R. 111).

But where a small part of the property taken was, with other property of the vendor (an owner entitled in fee), subject to a mortgage which was vested in trustees of a testator whose estate was being administered by the Court; and the vendor had entered into an agreement for sale without disclosing the mortgagee; it was held that, under the circumstances, the company ought not to pay the costs of obtaining an order in the administration action sanctioning the concurrence of the trustees in the conveyance (*Re L. & S. W. Ry. Act*, 1855; *Ex p. Phillips*, 1862, 3 D. J. & S. 341, reversing 2 J. & H. 392).

And where, after entering into an agreement, the landowner devised all his real estate in strict settlement, the costs of a suit to carry out the sale were ordered to be paid out of the purchase money (*Eastern Counties Ry. Co. v. Tufnell*, 1843, 3 Ry. Cas. 133).

Rule 12 of the rules to Schedule 1, Part I. of the General Order under the Solicitors' Remuneration Act, 1881, provides that "in cases of sales under the Lands Clauses Consolidation Act, or any other private or public Act under which the vendor's charges are paid by the purchaser, the scale shall not apply." This rule relates to a purchase by agreement by a public body under the powers of such an Act, although the vendor is absolute owner, and although the agreement contains a special clause stipulating that the purchasers shall bear all the vendor's costs so that the vendor shall be put to no expense whatever in the matter (*Re Burdekin*, 1895, 2 Ch. 136). A voluntary purchase by a local authority under

Solicitor's
costs.
Exclusion
of scale.

Section 82. the powers of the Public Health Act, 1875, is within the rule (S. C. ; *cf. Ex p. Rayner, supra*, p. 130). The rule, however, does not extend to the costs of the purchasing body's solicitor, and he is paid according to the scale (*Re Stewart*, 1889, 41 C. D. 494). Where the scale does not apply, the solicitor's remuneration is regulated by the system existing before the Order, as altered by Schedule 2 to the Order (clause 2c of the Order).

Costs of collateral agreement.

The section does not cover costs of a transaction which is merely collateral to the purchase. Thus where, on taking land from a colliery company, a railway company entered into an agreement to carry the vendors' coals at a fixed price, they were not called upon to pay the costs of such agreement (*Re Lietch and Keirney*, 1867, 15 W. R. 1055).

No deduction for costs out of money deposited.

Money deposited under sect. 85 will be ordered to be paid out to the company on their compliance with that section without any deduction for costs under this section (*Re London and Southampton Ry. Extension Act*, 1848, 2 Ph. 772, reversing 16 Sim. 165 ; see cases *supra*, p. 248).

Taxation of Costs.

Section 83.

Costs of conveyance are subject to taxation, and are recoverable as costs payable under order of Court, or by distress.

LXXXIII. If the promoters of the undertaking and the party entitled to any such costs shall not agree as to the amount thereof, such costs shall be taxed by one of the taxing masters of the Court of Chancery [*or by a master in Chancery in Ireland**] upon an Order of the same Court, to be obtained upon petition in a summary way by either of the parties ; and the promoters of the undertaking shall pay what the said master shall certify to be due in respect of such costs to the party entitled thereto, or in default thereof the same may be recovered in the same way as any other costs payable under an Order of the said Court, or the same may be recovered by distress in the manner hereinbefore provided in other cases of costs ; and the expense of taxing such costs

* Repealed by St. L. R. A. 1892.

shall be borne by the promoters of the under-
taking, unless upon such taxation one-sixth part
of the amount of such costs shall be disallowed,
in which case the costs of such taxation shall be
borne by the party whose costs shall be so taxed,
and the amount thereof shall be ascertained by
the said master, and deducted by him accordingly
in his certificate of such taxation. Section 83.

A taxation of costs under this section can be reviewed by the Court; though it is otherwise with costs which are settled under the L. C. (Taxation of Costs) Act, 1895, *infra*, p. 369 (*Sandback Charity Trustees v. N. Staff. Ry. Co.*, 1877, 2 Q. B. D. 1, 5). But the company cannot tax the costs of conveyance after payment (*Re S. E. Ry. Co.*; *Ex p. Somerville*, 1883, 23 C. D. 167).

ENTRY UPON LANDS.

And with respect to the entry upon lands by the promoters of the undertaking, be it enacted as follows :—

- § 84. Payment or Deposit of Price, or Consent of Owner, before Entry, except to survey and mark out.
- § 85. Entry upon Lands before Purchase on making and giving Bond.
- § 86. Payment in of Deposit and Cashier's Receipt.
- § 87. Investment, Application, and Payment out of Deposit.
- § 88. Payment into Bank when Office of Accountant-General closed.
- § 89. Penalty on Entry without complying with these Provisions. Recovery of Penalty.
- § 90. Decision of Justices as to Right of Entry not conclusive.
- § 91. Proceedings in Case Owner refuses to give up Possession.

Payment or Deposit of Price, or Consent of Owner, before Entry, except to survey and mark out.

Section 84.

Promoters not to enter until compensation paid or deposited in Bank: except for purpose of surveying, &c.

LXXXIV. The promoters of the undertaking shall not, except by the consent of the owners and occupiers, enter upon any lands which shall be required to be purchased or permanently used for the purposes and under the powers of this or the special Act, until they shall either have paid to every party having any interest in such lands, or deposited in the Bank, in the manner herein mentioned, the purchase money or compensation agreed or awarded to be paid to such parties respectively for their respective interests therein: Provided always, that for the purpose merely of surveying and taking levels of such lands, and of

probing or boring to ascertain the nature of the soil, and of setting out the line of the works, it shall be lawful for the promoters of the undertaking, after giving not less than three nor more than fourteen days' notice to the owners or occupiers thereof, to enter upon such lands without previous consent, making compensation for any damage thereby occasioned to the owners or occupiers thereof. Section 84.

Power is given by sects. 30—44 of the Ry. C. A. 1845, for a railway company to occupy lands temporarily during the period fixed for completion of the railway. Temporary occupation.

Bringing waggons, rails, and other implements on the land with the assent of the occupying tenants has been held not to be a taking possession within the meaning of this section (*Standish v. Mayor, &c. of Liverpool*, 1852, 1 Drew. 1). Entry.
Consent of owners and occupiers.

Consent is not to be inferred from the mere absence of objection on the part of the landowner or his agents to the company taking possession and remaining in possession of the land; at any rate, where the landowner is not aware of his title to the land (*Marquis of Salisbury v. G. N. Ry. Co.*, 1858, 5 C. B. N. S. 174, pp. 212, 217).

Where the company entered before ascertainment of the purchase money by a verbal consent, as to the nature whereof there was a dispute, and commenced their works, the Court declined to interfere by injunction to stop the works, since justice could be done by compelling the company to pay for the land: but they were ordered to deposit the approximate value (*Langford v. Brighton, Lewes & Hastings Ry. Co.*, 1845, 4 Ry. Cas. 69).

Where possession is taken by a company with the consent of the owners and occupiers, though without following the statutory procedure, the consent cannot be revoked and the company treated as trespassers (*Knapp v. L. C. & D. Ry. Co.*, 1863, 2 H. & C. 212), and acquiescence is equivalent to consent (*Greenhalgh v. Manchester, &c. Ry. Co.*, 1838, 3 My. & Cr. 784). Entry without following statutory requirements.

Where the company enter without complying with the statutory requirements, and the landowner subsequently negotiates with them, he will be considered to have waived his objection to their proceedings (*Tower v. Eastern Counties Ry. Co.*, 1843, 3 Ry. Cas. 374).

Section 84.

Where the purchase money is to be ascertained by arbitration and the landowner permits the company to enter and commence their works pending the reference, the remedy of the landowner, in the event of a subsequent dispute, is on the award, and he cannot treat the company as trespassers (*Doe v. Leeds, &c. Ry. Co.*, 1851, 16 Q. B. 796, on a special Act prior to this Act).

Lands
purchased
or per-
manently
used.

Although the section speaks of land being purchased or permanently used, yet there is no power for the company to decline to purchase the land itself, and to elect permanently to use it, as by tunnelling or carrying the line over it on arches; in other words the company cannot, in the absence of express power, give notice to treat for an easement for such purposes. If they want to use the land for permanent purposes, they must acquire the entire ownership (*Pinchin v. London & Blackwall Ry. Co.*, 1854, 5 D. M. & G. 851, 861, per Lord Cranworth, C., differing from *Wood, V.-C.*, 1 K. & J. 34). Hence, if it is required to divert a road under sect. 16 of the Ry. C. A. 1845, the company must acquire the land over which the new road is to go (*Rangeley v. Mid. Ry. Co.*, 1868, 3 Ch. 306, 311). And the person entitled to the soil of land subject to a public right of way can object to the company taking it before compensation made or deposit paid, though for the purpose of a tunnel under the same section (*Ramsden v. Manchester, &c. Ry. Co.*, 1848, 5 Ry. Cas. 552). As to using land under the Metrop. Local Management Acts without acquiring it, see *N. London Ry. Co. v. M. B. W.* (1859, Johns. 405).

Abstrac-
tion of
water.

The mere abstraction of water from a stream does not bring a riparian owner within this section as being a taking of his portion of the stream, but only entitles him to proceed under sect. 68 (*Bush v. Trowbridge Waterworks Co.*, 1875, 19 Eq. 291).

But the diversion of the stream is an entry under this section and sect. 85, and before the diversion can be made the value of the stream must be ascertained, and secured to the owners of the land through which it passes (*Ferrand v. Corp. of Bradford*, 1856, 21 Beav. 412).

Interfer-
ence with
wharf.

Where under a special Act the L. C. A. was incorporated, with a provision that the word "lands" should include easements and interests in land, and a public body took foreshore of a river upon which an adjoining wharf-owner had been accustomed to allow barges to rest, it was held that this was not the taking of an easement or interest

in land, but only an injurious affecting of the wharf-owner's rights under sect. 68, and that sect. 84 did not apply. The enjoyment by the wharf-owner of the foreshore was analogous to a right of access over a public way (*Macey v. Metrop. B. W.*, 1864, 33 L. J. Ch. 377). And similarly as to interference with a steamboat pier and substitution of a new pier (*Temple Pier Co. v. Metrop. B. W.*, 1865, 13 W. R. 535). Section 84.

The company must, before entry, settle not only with the person in possession of the land comprised in the notice to treat, but also with all persons having any interest in it (*Inge v. Birmingham, &c. Ry. Co.*, 1853, 3 D. M. & G. 658), including, for instance, the interest of a mortgagee whose debt is payable by an annuity secured by a demise of the land (*University Life Assurance Society v. Met. Ry. Co.*, W. N. 1866, p. 167); and they must pay for the whole, even though they enter upon only a part (*Barker v. N. Staff. Ry. Co.*, 1848, 2 De G. & S. 55). So where a company had given notice to divert and appropriate the whole of a stream, it was held that they could not take any of the water till they had paid for the whole (*Stone v. Corp. of Yeovil*, 1876, 2 C. P. D. 99). Company must settle for every interest.

Some property was mortgaged to the plaintiffs, who were not bound to receive their money until a future day. A railway company, with knowledge, treated with the mortgagor alone, and, not agreeing, paid into Court to the credit of the mortgagor the amount of compensation, but made no provision for the compensation to the mortgagees under sect. 114. The company then took possession, and commenced pulling down the buildings. The Court restrained the company from proceeding until the value of the mortgagees' interests had been ascertained, and paid or secured (*Ranken v. The E. & W. India Docks and Birmingham, &c. Ry. Co.*, 1849, 12 Beav. 298). Mortgagees.

Mortgagees and incumbrancers can claim the benefit of this section, the plain inference from the provisions of sects. 108—114 being that a company are not entitled to take possession of land subject to a mortgage, much less to destroy the buildings standing upon the land, without paying off the mortgage. So, where a person took land as tenant from year to year, under an agreement which provided that, if the landlord should determine the tenancy within twenty years, the tenant should have the option of removing any buildings erected by him, or of having a charge

Section 84. on the land and buildings for twenty years from the date of the agreement for a twentieth part in each year of the cost of the buildings; and the tenant erected buildings; on the land being taken under this Act the company were held to be bound by this section, and, the tenancy terminating at the end of the seventh year, the company had to provide before entry thirteen-twentieths of the cost of the buildings (*Rogers v. Dock Co. at Kingston-upon-Hull*, 1864, 4 N. R. 494; affirmed 5 N. R. 26).

Wrongful entry.

Where the company entered without paying for the land or complying with sect. 85, an injunction was granted against their proceeding with their works, notwithstanding the penalty provided by sect. 89 (*Armstrong v. Waterford, &c. Ry. Co.*, 1846, 10 Ir. Eq. R. 60). And if they subsequently make the deposit and give the bond under sect. 85, they must pay the costs of a motion to dissolve the injunction (*Woodard v. Eastern Counties Ry. Co.*, 1855, 3 W. R. 330; cf. *Kensington v. Metrop. Ry. Co.*, 1866, 14 L. T. 580).

Wrongful entry rightfully continued.

An entry irregularly made, as where the bond is insufficient, does not preclude a continuance of possession when all has been done which was originally required to render the entry rightful (*Willey v. S. E. Ry. Co.*, 1849, 6 Ry. Cas. 100, 1 Mac. & G. 58).

Company acting *bonâ fide*.

And even if the entry were wrongful, yet the Court will probably not interfere by injunction if the company have acted *bonâ fide* and are able by a proper exercise of their powers to put themselves in the right (*Williams v. South Wales Ry. Co.*, 1849, 3 De G. & Sm. 354, where, however, the entry was considered wrongful because made after the time-limit for the exercise of compulsory powers had expired, although the notice to treat was given before, a view which is now settled to be erroneous, *infra*, p. 323; cf. *Dakin v. L. & N. W. Ry. Co.*, 1849, 3 De G. & Sm. 414).

Entry for survey without notice.

Where the company made an entry for the purpose of survey without the notice required by sect. 84, but did not remain on the land, the Court refused an injunction, but reserved the costs (*Fooks v. Wilts. &c. Ry. Co.*, 1846, 5 Hare, 199).

Adverse claims.

If the company have purchased land from the apparent owner, an injunction against their continuing in possession will not be granted at the suit of an adverse claimant. His remedy is by ejectment (*Webster v. S. E. Ry. Co.*, 1851, 1 Sim. N. S. 272).

Entry before Purchase on making Deposit and giving Bond.

LXXXV. Provided also, that if the promoters of the undertaking shall be desirous of entering upon and using any such lands before an agreement shall have been come to or an award made or verdict given for the purchase money or compensation to be paid by them in respect of such lands, it shall be lawful for the promoters of the undertaking to deposit in the Bank by way of security, as hereinafter mentioned, either the amount of purchase money or compensation claimed by any party interested in or entitled to sell and convey such lands, and who shall not consent to such entry, or such a sum as shall, by a surveyor appointed by two justices in the manner hereinbefore provided in the case of parties who cannot be found, be determined to be the value of such lands, or of the interest therein which such party is entitled to or enabled to sell and convey, and also to give to such party a bond, under the common seal of the promoters if they be a corporation, or if they be not a corporation under the hands and seals of the said promoters, or any two of them, with two sufficient sureties, to be approved of by two justices in case the parties differ, in a penal sum equal to the sum so to be deposited, conditioned for payment to such party, or for deposit in the Bank for the benefit of the parties interested in such lands, as the case may require, under the provisions herein contained, of all such purchase money or compensation as may in manner hereinbefore provided be determined to be payable by the promoters of the undertaking in respect of the lands so entered upon, together with interest thereon at the rate of five pounds per centum per annum from the time of entering

Section 85.

If promoters desire to enter before compensation ascertained, they shall deposit in Bank either the amount claimed, or the sum determined by a surveyor appointed by two justices, and give a bond with sureties for payment or deposit of compensation when ascertained with 5 per cent. interest from time of entry.

Section 85. on such lands until such purchase money or compensation shall be paid to such party, or deposited in the Bank for the benefit of the parties interested in such lands, under the provisions herein contained; and upon such deposit by way of security being made as aforesaid, and such bond being delivered or tendered to such non-consenting party as aforesaid, it shall be lawful for the promoters of the undertaking to enter upon and use such lands, without having first paid or deposited the purchase money or compensation in other cases required to be paid or deposited by them before entering upon any lands to be taken by them under the provisions of this or the special Act.

**Applica-
tion of the
section.**

The company may enter under this section on making the deposit and delivering the bond, although there has been no previous agreement with or notice to the owners, the land being scheduled in the special Act (*Bridges v. Wilts, &c. Ry. Co.*, 1847, 4 Ry. Cas. 622).

This section applies exclusively to compulsory purchases, and hence an entry under its provisions prevents the company from setting up a prior agreement for purchase of the lands (*Bedford, &c. Ry. Co. v. Stanley*, 1862, 2 J. & H. 746, 763).

**Receiver
in posses-
sion.**

Should a receiver appointed by the Court be in possession, the leave of the Court must be obtained by the company before proceeding under this section (*Tink v. Rundle*, 1847, 10 Beav. 318).

**Section not
confined to
cases of
urgency.**

Apparently sect. 85 is not confined to cases of urgency. The words of the section require only a desire on the part of the company to enter and use the lands, and the very fact of the company exercising the power given by the section is sufficient evidence of such a desire (*Loosemore v. Tirerton & North Devon Ry. Co.*, 1882, 22 C. D. 25, per Fry, J., at p. 39; *Willey v. S. E. Ry. Co.*, 1849, 6 Ry. Cas. 100, 1 Mac. & G. 58). Though in *Field v. Carnarvon & Llanberis Ry. Co.* (1867, 5 Eq. 190), Malins, V.-C., held that a company could not avail itself of the power given by this section, unless there was urgent necessity for immediate entry.

A company cannot enter upon part of the lands comprised in the notice to treat until they have paid a deposit in respect of the whole (*Barker v. N. Staff. Ry. Co.*, 1848, 5 Ry. Cas. 401, 2 De G. & S. 55; see *Ford v. Plymouth, &c. Ry. Co.*, 1887, W. N. p. 201). But the deposit need not cover minerals (*Ex p. Neath & Brecon Ry. Co.*, 1876, 2 C. D. 201).

Section 85.

Deposit must cover whole land required, though entry on part only.

And where a counter-notice has been served under sect. 92, requiring the company to take the whole of a property, the company are not at liberty to take possession of any part of such property until they have deposited the value of the whole property in the Bank, it being not sufficient that they should have deposited the value only of the portion taken by them (*Giles v. L. C. & D. Ry. Co.*, 1860, 1 Dr. & Sm. 406; *Underwood v. Bedford, &c. Ry. Co.*, 1861, 7 Jur. N. S. 941; *Dadson v. East Kent Ry. Co.*, 1859, *ibid.*; see *S. W. Ry. Co. v. Coward*, 1848, 5 Ry. Cas. 703, as to entry on lessees whose term has expired since the date of the counter-notice, but who are remaining in possession under a claim to be yearly tenants).

A railway company were entitled under a special Act to acquire compulsorily an easement of tunnelling under land, unless a jury should determine that such easement could not be acquired without material detriment to the remainder of the land, in which case the surface was to be purchased. It was held that the company could enter under sect. 85 for the purpose of making the tunnel upon depositing the value of the easement, and could not be compelled to deposit the value of the whole land. The company were entitled to the benefit of the presumption that there would be no adverse finding by a jury (*Hill v. Mid. Ry. Co.*, 1882, 21 C. D. 143). And so, where the company are empowered to take part of lands if the severance can be effected without material detriment to the remainder, and there has been an award in favour of severance, the company can enter on the part required, though proceedings by the landowner to set aside the award are pending (*Lambert v. Dublin, &c. Ry. Co.*, 1890, 25 L. R. Ir. 163).

Entry where there is a "material detriment" clause.

In the case of railway companies, it is provided by sect. 36 of the Railway Companies Act, 1867, that the surveyor for the purposes of this section shall be appointed by the Board of Trade instead of by justices. The company must give to the other party interested not less than seven days' notice of their intention to apply to the Board

Appointment of surveyor.

Section 85. of Trade for the appointment of a surveyor. After that Act a railway company were held to be debarred from proceeding upon a valuation made previously, and they could only enter on depositing the amount of a valuation under the Act (*Field v. Carnarvon, &c. Ry. Co.*, 1867, 5 Eq. 190).

The appointment of the surveyor and the approval of the sureties may take place *ex parte* (*Langham v. G. N. Ry. Co.*, 1847, 1 De G. & Sm. p. 499; 5 Ry. Cas. p. 265; *Poynder v. G. N. Ry. Co.*, 1847, 16 Sim. 3).

As to appointing the company's own surveyor, see *supra*, p. 80.

As to the necessity for the surveyor actually to visit the premises, see *supra*, p. 158.

What
deposit
must
include.

The deposit must include not only the value of the land, but the compensation for severance and injury, to which the landowner would be found entitled by a jury or on arbitration (*S. C.*).

So under sect. 36 of the Railway Companies Act, 1867, the valuation is to "include the amount of compensation for all damage and injury to be sustained by reason of the exercise of the powers conferred by [sect. 85], so far as such damage and injury are capable of estimation."

The amount to be valued under sect. 85 includes fixtures which the company are bound to take under sect. 92 (*Gibson v. Hammersmith Ry. Co.*, 1863, 11 W. R. 299).

Deposit of
compensa-
tion.

If the amount to be paid in has been properly determined, the proceedings under sect. 85 are not necessarily invalid because the amount was paid in before the award was actually signed (*Stamps v. Birmingham, &c. Ry. Co.*, 1848, 7 Hare, p. 256).

Payment
of excess
of valua-
tion over
deposit.

Where on the value of the land being duly ascertained by arbitration or a jury the amount is found to be larger than the sum deposited under this section, the company will be ordered to pay the difference into Court (*Ashford v. L. C. & D. Ry. Co.*, 1866, 14 L. T. 787; *Ex p. London, Tilbury & Southend Ry. Co.*, 1853, 1 W. R. 533).

Form of
bond.

Where the bond was conditioned to pay a person, "her heirs, executors, administrators, or assigns, or to deposit in the Bank, or otherwise, for the benefit of the parties," &c., as the case might require, under the provisions contained in this Act, the introduction of the words "or otherwise," was held not to be authorized by the Act, and the bond, therefore, did not comply with it (*Hoskins v. Phillips*, 1848, 5 Ry. Cas. 560; *cf. Dakin v. L. & N. W. Ry. Co.*, 1849, 3 De G. & Sm. 414).

"Or other-
wise."

A bond conditioned for payment to two tenants in common, "[their] heirs, executors, administrators or assigns," is irregular (*Langham v. G. N. Ry. Co.*, 1847, 5 Ry. Cas. 263; *cf. Daubney v. M. S. & L. Ry. Co.*, 1847, 10 L. T. O. S. 283).

Section 85.
Tenants in common.

Where the person dealing with the company represented the entirety of an interest, and the condition of the bond was for payment to him, his executors, administrators or assigns, or into the Bank for his or their benefit, the bond was held to be regular, and it was not necessary that it should contain the alternative—"for the parties interested in such lands" (*Willey v. S. E. Ry. Co.*, 1849, 1 Mac. & G. 58).

Person solely interested.

A condition for payment or deposit in the Bank "at any time hereafter" is not good (*Cotter v. Met. Ry. Co.*, 1864, 4 N. R. 454); so also the words "on demand," inserted in the bond, render it informal (*Poynder v. G. N. Ry. Co.*, 1847, 5 Ry. Cas. 196; 16 Sim. 3; 2 Phil. 330; *Langham v. G. N. Ry. Co.*, 1847, 5 Ry. Cas. 263; 1 De G. & Sm. 486).

Condition for payment "at any time hereafter."
"On demand."

A recital in the bond of the quantity of land required out of a certain larger piece was a sufficient description under this section, the land being sufficiently identified by the prior transactions (*Willey v. S. E. Ry. Co.*, 1849, 6 Ry. Cas. 100; 1 Mac. & G. 58).

Description of land.

Notice given to a landowner by a railway company of their intention to summon a jury does not render it inequitable for them to proceed in the meantime, under sect. 85, to obtain possession (*Langham v. G. N. Ry. Co.*, 1847, 1 De G. & Sm. 486); and pull down a house (*Bolton v. London School Board*, 1878, 7 C. D. 766). It is not a sufficient ground to restrain the company from changing the aspect of the property, that the jury may be thereby prevented from accurately awarding compensation with reference to its original state (*Langham v. G. N. Ry. Co.*).

Company may enter though notice given for jury.

Notwithstanding aspect of property will be changed.

Payment of Deposit and Cashier's Receipt.

LXXXVI. The money so to be deposited as last aforesaid shall be paid into the Bank in the name and with the privity of the Accountant-General of the Court of Chancery [*in England or

Section 86.
Deposit to be made to credit of parties interested.

* Repealed by St. L. R. A. 1892.

Section 88. *the Court of Exchequer in Ireland*], to be placed to his account there to the credit of the parties interested in or entitled to sell and convey the lands so to be entered upon, and who shall not have consented to such entry, subject to the control and disposition of the said Court; and upon such deposit being made the cashier of the Bank shall give to the promoters of the undertaking, or to the party paying in such money by their direction, a receipt for such money specifying therein for what purpose and to whose credit the same shall have been paid in.

Title of account.

Money may be paid in to the credit of "*Ex parte* the promoters of the undertaking, the account of the landowner" (*Poynder v. G. N. Ry. Co.*, 1847, 16 Sim. 3).

Investment, Application, and Payment out of Deposit.

Section 87.

Deposit to remain as security for condition of bond, and to be invested on application of promoters; on performance may be repaid to promoters, or otherwise may be applied for benefit of landowners.

LXXXVII. The money so deposited as last aforesaid shall remain in the Bank, by way of security to the parties whose lands shall so have been entered upon for the performance of the condition of the bond to be given by the promoters of the undertaking, as hereinbefore mentioned, and the same may, on the application by petition of the promoters of the undertaking, be ordered to be invested in bank annuities or government securities, and accumulated; and upon the condition of such bond being fully performed it shall be lawful for the Court of Chancery [**in England or the Court of Exchequer in Ireland*], upon a like application, to order the money so deposited, or the funds in which the same shall have been invested, together with the accumulation thereof, to be repaid or transferred to the promoters of the undertaking, or if such condition shall not be fully performed it shall be

*Repealed by St. L. R. A. 1892.

lawful for the said Court to order the same to be applied, in such manner as it shall think fit, for the benefit of the parties for whose security the same shall so have been deposited. Section 87.

An application for investment should not be served on the landowner (*Ex p. Carmarthen, &c. Ry. Co.*, 1863, 2 N. R. 515).

The deposit paid into Court is the price which the company pay for the privilege of taking immediate possession, and the object of this section is satisfied when the company have obtained possession, and the ordinary remedies of a vendor in respect of his purchase moneys—such as his lien for unpaid purchase money with the right of enforcing the lien—remain unaffected (*Wing v. Tottenham, &c. Ry. Co.*, 1868, 3 Ch. 740, p. 744; *Walker v. Ware, &c. Ry. Co.*, 1865, 1 Eq. 195). Deposit does not affect lien for unpaid purchase money.

Production of the bond by the company is sufficient evidence that the conditions have been satisfied, and the money deposited under it will be ordered to be paid out to the company (*Re L. & N. W. Ry. Co.*, 1872, 26 L. T. 687); as to payment to the secretary, see *Ex p. L. C. & D. Ry. Co.*, 1860, 8 W. R. 636. Evidence of satisfaction of conditions.

In the event of non-performance by the company of the condition of the bond, the Court has jurisdiction under this section to order payment of the deposit to the landowner on a petition presented by him for that purpose adversely to the company (*Re Mutlow's Estate*, 1878, 10 C. D. 131). But where mortgagees by deposit of deeds to whom, as well as to the mortgagor, a bond under sect. 85 had been given, were not parties to the inquiry by which the compensation was ascertained, and the compensation was less than the amount of the mortgage debt, it was held that the mortgagees had no lien on the sum in Court, that they were not bound by the inquiry, and were, as equitable mortgagees, entitled in default of payment to an assignment by the company and the landowner of the lands comprised in their security (*Martin v. L. C. & D. Ry. Co.*, 1866, 1 Ch. 501). Non-performance of condition.

Upon a petition for payment of the deposit to the company, the vendor should in general either join in the petition or be served with a copy of it (*Ex p. South Wales Ry. Co.*, 1850, 6 Ry. Cas. 151). There is, it has been said, no reason for dispensing with service of the petition Service of petition for payment out.

Section 87. upon persons whose names are mentioned in the account (*Ex p. L. & N. W. Ry. Co.*, W. N. 1887, p. 128). But service on the vendor has been dispensed with where his consent in writing to the petition for payment out was obtained (*Ex p. Mayor of Huddersfield; Re Dyson*, 1882, 46 L. T. 730), or on production of an affidavit that his costs according to the Act had been discharged (*Ex p. Eastern Counties Ry. Co.*, 1848, 5 Ry. Cas. 210; *Ex p. Windsor, &c. Ry. Co.*, 1849, 13 Jur. 760). Though since the vendor has no lien for costs on the deposit, the principle of the latter cases is not clear.

Service on the representative of a deceased vendor was dispensed with where the conveyance was made in 1871, and the petition for payment of the deposit not presented till 1886. In the meantime the fund had been transferred under r. 101 of the S. C. Funds Rules to the list of dormant funds, and the official solicitor was served and appeared on the petition (*Ex p. L. & Y. Ry. Co.*, 1886, 55 L. T. 58; see *Ex p. Mid. Ry. Co.*, 1894, 38 Sol. Journ. 289).

Tender of costs should be made.

But though it is usually proper to serve the vendor, there is in general no need for his appearance, and it seems that the company can avoid the costs of his appearance by making the usual tender of 42s. on service of the petition:—

Upon a petition for payment out, where parties who have ceased to have any interest in the fund are necessarily served because their names appear in the title to the account, the proper course is to tender a sum to cover the cost of consulting a solicitor, with an intimation that, if they appear, their costs will be objected to. Where this is not done these costs will be allowed (*Ex p. L. & S. W. Ry. Co.*, 1869, 38 L. J. Ch. 527).

Vendor appearing to consent.

Costs of a party appearing to a petition for payment of the deposit merely to consent will only be allowed under special circumstances, as where he is in the position of a trustee, and no evidence of payment of the purchase money has been given till the day before the hearing (*Re Tottenham, &c. Ry. Co.*, 1866, 14 W. R. 669).

Costs of vendors appearing to consent will not be allowed (*Re Holman's Settlement*, W. N. 1877, p. 272).

Several deposits.

Where a company have made several deposits which stand to the credit of separate accounts, and the purchases have been completed, all can be paid out on one petition (*Re Downpatrick, &c. Ry. Co.*, 1870, Ir. R. 4 Eq. 497).

As to cases where the application should be by summons instead of by petition, see *supra*, p. 200. Section 87.

If an award has been made, and the full compensation paid into the Bank, the landowner cannot resist payment of the deposit out of Court on the ground that he is engaged in proceedings to set aside the award (see *Re Fooks*, 1849, 2 Mac. & G. 357). Proceedings pending to set aside award.

Payment into Bank when Office of Paymaster-General closed.

LXXXVIII. If at any time the company be unable, by reason of the closing of the office of the Accountant-General of the Court of Chancery [**in England or the Court of Exchequer in Ireland*], to obtain his authority in respect of the payment of any sum of money so authorized to be deposited in the Bank by way of security as aforesaid, it shall be lawful for the company to pay into the Bank to the credit of such party or matter as the case may require (subject nevertheless to being dealt with as hereinafter provided, and not otherwise), such sum of money as the promoters of the undertaking shall, by some writing signed by their secretary or solicitors for the time being addressed to the [*†governor and company of the*] Bank in that behalf, request, and upon any such payment being made the cashier of the Bank shall give a certificate thereof; and in every such case, within ten days after the reopening of the said Accountant-General's Office, the solicitor for the promoters of the undertaking shall there bespeak the direction for the payment of such sum into the name of the Accountant-General, and upon production of such direction at the Bank of England the money so previously paid in shall be placed to the credit of the said Accountant-General accord-

Section 88.

When office of Paymaster-General closed, money may be paid into Bank on certificate of cashier: to be subsequently paid to credit of Paymaster-General.

* Repealed by St. L. R. A. 1892.

† By St. L. R. A. 1891.

Section 88. ingly, and the receipt for the said payment be given to the party making the same in the usual way, for the purpose of being filed at the Report Office.

Penalty on Entry without complying with these Provisions. Recovery of Penalty.

Section 89.

If promoters wilfully enter without consent, or payment, or deposit, they forfeit 10*l.*, with damage, to be recovered before justices; and if, after conviction, they continue in unlawful possession, they forfeit 25*l.* a day, recoverable in High Court. But promoters not to be liable to penalties if compensation *bonâ fide* paid to person they reasonably believe entitled, though in fact he is not entitled.

LXXXIX. If the promoters of the undertaking or any of their contractors shall, except as aforesaid, wilfully enter upon and take possession of any lands which shall be required to be purchased or permanently used for the purposes of the special Act, without such consent as aforesaid, or without having made such payment for the benefit of the parties interested in the lands or such deposit by way of security as aforesaid, the promoters of the undertaking shall forfeit to the party in possession of such lands the sum of ten pounds, over and above the amount of any damage done to such lands by reason of such entry and taking possession as aforesaid, such penalty and damage respectively to be recovered before two justices; and if the promoters of the undertaking or their contractors shall, after conviction in such penalty as aforesaid, continue in unlawful possession of any such lands, the promoters of the undertaking shall be liable to forfeit the sum of twenty-five pounds for every day they or their contractors shall so remain in possession as aforesaid, such penalty to be recoverable by the party in possession of such lands, with costs, by action in any of the Superior Courts: Provided always, that nothing herein contained shall be held to subject the promoters of the undertaking to the payment of any such penalties as aforesaid, if they shall *bonâ fide* and without collusion have paid the compensation agreed or awarded to be paid in respect of the said lands to any person

whom the promoters of the undertaking may have reasonably believed to be entitled thereto, or shall have deposited the same in the Bank for the benefit of the parties interested in the lands, or made such deposit by way of security in respect thereof as hereinbefore mentioned, although such person may not have been legally entitled thereto. Section 89.

The word "wilfully" in this section implies an absence of honest belief on the part of the company in their right to enter (*Steele v. Mid. Ry. Co.*, 1869, 21 L. T. 387). "Wilfully."

Where the nomination of a surveyor under sect. 59 is bad because one of the nominating justices is a shareholder in the company, but this fact is at the time unknown to the company, it is not a case of "wilful" entering (*S. C.*).

The word "wilfully" in this section does not override the whole of it, but applies only to the first part. If the company have *bonâ fide* and without collusion deposited the purchase money for the benefit of the plaintiff, they are protected by the proviso, though the conditions precedent to their right to deposit it have not been fulfilled (*Hutchinson v. Manchester, &c. Ry. Co.*, 1846, 15 M. & W. 314).

*Decision of Justices as to Right of Entry not
conclusive.*

XC. On the trial of any action for any such penalty as aforesaid the decision of the justices under the provision hereinbefore contained shall not be held conclusive as to the right of entry on any such lands by the promoters of the undertaking. Section 90.

*Proceedings in Case Owner refuses to give up
Possession.*

XCI. If in any case in which, according to the provisions of this or the special Act, or any Act incorporated therewith, the promoters of the undertaking are authorized to enter upon and Section 91.

Where promoters are hindered in entering, they may

Section 91.

issue warrant to sheriff to deliver possession to person appointed by them, costs to be deducted from compensation or recovered by distress.

take possession of any lands required for the purposes of the undertaking, the owner or occupier of any such lands or any other person refuse to give up the possession thereof, or hinder the promoters of the undertaking from entering upon or taking possession of the same, it shall be lawful for the promoters of the undertaking to issue their warrant to the sheriff to deliver possession of the same to the person appointed in such warrant to receive the same, and upon the receipt of such warrant the sheriff shall deliver possession of any such lands accordingly; and the costs accruing by reason of the issuing and execution of such warrant, to be settled by the sheriff, shall be paid by the person refusing to give possession; and the amount of such costs shall be deducted and retained by the promoters of the undertaking from the compensation, if any, then payable by them to such party, or if no such compensation be payable to such party, or if the same be less than the amount of such costs, then such costs, or the excess thereof beyond such compensation, if not paid on demand, shall be levied by distress, and upon application to any justice for that purpose he shall issue his warrant accordingly.

PART OF A HOUSE.

§ 92. Owners not to be compelled to sell Part of a House.

Owners not to be compelled to sell Part of a House.

XCII. And be it enacted, that no party shall at any time be required to sell or convey to the promoters of the undertaking a part only of any house or other building or manufactory, if such party be willing and able to sell and convey the whole thereof. Section 92.

Persons under disability may take the benefit of this section (*St. Thomas's Hospital v. Charing Cross Ry. Co.*, 1861, 1 J. & H. 400); and so may a lessee, though his option will not affect the reversioner (*Pulling v. L. C. & D. Ry. Co.*, 1864, 3 D. J. & S. 661). Who may use the section.

It has been said, in reference to this section, that the Act is to be construed liberally and not to the detriment of existing rights (*King v. Wycombe Ry. Co.*, 1860, 29 L. J. Ch. 462); but this must not be taken to imply that its provisions are to be strained in favour of the landowner. It ought not, it has been said more recently, to be construed liberally in favour of the landowner, but reasonably and fairly (*Brook v. M. S. & L. Ry. Co.*, 1895, 2 Ch. p. 575). Construction of the section.

In the absence of express power, the company cannot take an easement, but if they require the land for tunnelling, or for carrying the railway over it on arches, they must acquire the land itself. Hence a company who require part of premises for these purposes can be called upon to take the whole (*Sparrow v. Oxford, &c. Ry. Co.*, 1852, 2 D. M. & G. 94; *Falkner v. Somerset, &c. Ry. Co.*, 1873, 16 Eq. 458; *Furniss v. Mid. Ry. Co.*, 1868, 6 Eq. 473); and a provision in the special Act that a certain part of the line shall be carried over arches is not inconsistent with Land taken for tunneling, &c.

Section 92. and does not exclude this section (*Sparrow v. Oxford, &c. Ry. Co.*, *supra*). But an easement is not part of a house within this section, and if the company are empowered to take an easement they cannot be required to take the whole house (*Pinchin v. London & Blackwall Ry. Co.*, 1854, 5 D. M. & G. 851, 861).

Counter-notice renders whole of premises necessary for works.

If part of a close is necessary for the purpose of the works, and the landowner requires the company to take the whole, this is sufficient evidence that the whole of the premises are necessary for the works, where the company are empowered to take such lands as are delineated on the deposited plans and are necessary for the purpose of their works (*Doe v. N. Staff. Ry. Co.*, 1851, 16 Q. B. 526). And so too, if, upon notice to treat for part of premises within the limits of deviation, the tenant requires the company to take the rest which is outside the limits, and the landlord refuses to sell more than he is obliged to, the whole of the premises (which were included in the deposited plans) are necessary for the completion of the works and the landlord is obliged to sell the whole (*Finck v. L. & S. W. Ry. Co.*, 1890, 44 C. D. 330; see *St. Thomas's Hospital v. Charing Cross Ry. Co.*, 1861, 1 J. & H. 400). Where the tenant refuses to give up part of the premises, it is reasonably necessary for the company to take the whole (44 C. D. p. 349).

Explanation of terms.

The three terms used here—"part only of any house, or other building, or manufactory"—denote three different units which are protected by this section. These must be considered as three things; that is to say, there may be a manufactory which is not a building, there may be a building which cannot properly be described as a house, and a house includes more than mere buildings (*Richards v. Swansea Improvement, &c. Co.*, 1878, 9 C. D. 425, per Cotton, L. J., p. 437).

"House."

The word "house" has been held to mean, not merely that which is a house in the ordinary sense, but a house both in the ordinary and legal sense; that is to say, it must be a house in the ordinary sense, but it may include more than a house in the ordinary sense, namely, that which is also a house in the legal sense; that is, the house and the curtilage and garden, and all that is necessary to the enjoyment of the house. And this "house" does not cease to be one unit because different parts of it are used for the purpose of different manufactures or businesses,

provided they are under one management (*Richards v. Sicansea Improvement, &c. Co.*, L. R. 9 C. D. 425, judgment of Brett, L. J.). Section 92.

“Building” and “house” are distinct in this way, that there may be a “building” which could not, either in the legal or in the ordinary sense, be said to be a “house;” and the word is added in this section as something different from that in order to include something not necessarily included in the meaning of the word “house” (S. C.). “Build-
ing.”

And the word “manufactory” is inserted in order to provide for the case of a manufacture which is carried on on premises where there is no house or building, but yet it is a “manufactory” in the sense of its being premises appropriate for the carrying on of what may be called a “manufacture” (S. C., judgment of Cotton, L. J.). “Manu-
factory.”

1. Test for application of sect. 92.

The view that by the word “house,” the Legislature intended to denote only the actual edifice or structure was pressed upon the Court of Appeal in *Grosvenor v. Hampstead Junction Ry. Co.* (1857, 1 De G. & J. 446), but was rejected, and in the absence of any other indication as to its meaning it was held that it must be taken in its ordinary legal sense, and would include, accordingly, whatever would pass under a conveyance or devise of the house (see *Hewson v. L. & S. W. Ry. Co.*, 1860, 8 W. R. 467; *Steele v. Mid. Ry. Co.*, 1866, 1 Ch. 275). It includes, therefore, “the buildings, curtilage, orchard, and garden” (Co. Lit. 56b; see *ibid.* 5b; Shep. Touch. p. 94; Wm. Saund. notes to *Smith v. Martin*, ed. 1871, p. 808). This rule of construction is now firmly established (*Low v. Staines, &c. Committee*, 1900, 16 T. L. R. 184). Test of
“part of a
house.”

The word “house” under this section includes all that will pass under the term in a grant of the house—*i.e.*, not only the curtilage, but also a garden attached to the house, and *à fortiori*, any buildings forming part of or appertaining to the messuage. Moreover, it is not confined to that which, though not structurally part of the building, is required for the residential purpose, but everything is “part of a house” which is an adjunct to the house for the purpose for which the house itself is used as a residence. Thus where a hospital was held to be a house, the theatre, though detached, was part of the “house,” and

Section 92. also a separate wing of the hospital (*St. Thomas's Hospital v. Charing Cross Ry. Co.*, 1861, 1 J. & H. 400; *Richards v. Swansea Improvement Co.*, *supra*).

Curtilage. A vacant piece of ground situated in front of a public-house not fenced off from the street, and separated from the house only by a narrow foot pavement, also without fence, which was ordinarily used by the public as a thoroughfare, though sometimes closed, and which piece of ground had for upwards of sixty years been treated as passing to the lessee by every demise of the public-house, and which was used by the customers of the public-house, and afforded the only approach for vehicles to the front door of the house, was held to be curtilage, and therefore part of a house (*Marson v. L. C. & D. Ry. Co.*, 1868, 6 Eq. 101).

Gardens. In the following cases land used or intended for gardens has been held to be part of a house:—

A small strip of ground at the extremity of the garden (*Cole v. West End of London, &c. Ry. Co.*, 1859, 5 Jur. N. S. 1114); the furthest of a series of gardens separated by walls, but connected with one another and with the house by a gravel walk passing through the dividing walls, the furthest garden having been included more recently than the rest (*Heuson v. L. & S. W. Ry. Co.*, 1860, 8 W. R. 467); a portion of land which, upon the completion of the design of a charitable institution which had been covenanted to be erected in the purchase deed of the land, would form part of a garden in front of the almshouses (*Grosvenor v. Hampstead Junction Ry. Co.*, 1857, 1 De G. & J. 446); a portion of land which was intended to form the gardens of three newly erected houses, which were in an unfinished and greatly dilapidated state, but not irreparable (*Alexander v. Crystal Palace Ry. Co.*, 1862, 30 Beav. 556); and part of the garden of a hospital (*St. Thomas's Hospital v. Charing Cross Ry. Co.*, *supra*).

Part necessary for enjoyment of rest.

Another form of the test is whether the part of the premises which it is proposed to take is essential for the use and enjoyment of the remainder. Thus, the company cannot take a portion of a garden and orchard essential to the enjoyment of a mansion and premises. The word "house" is intended to comprise such adjuncts as are within its circuit and necessary to its use and enjoyment (*King v. Wycombe Ry. Co.*, 1860, 29 L. J. Ch. 462, where the entire premises were surrounded by a brick wall and were let together).

A house and garden were surrounded by a wall. A gateway in the wall at the rear of the garden opened into a paddock surrounded by a high hedge of an ornamental kind. From the gateway the back road to the house passed through the paddock to a public road running along the far side of the paddock fence. It was held that the paddock was part of the house within sect. 92 (*Barnes v. Southsea Ry. Co.*, 1884, 27 C. D. 536). Section 92.

Where the owner and occupier of a dwelling-house, standing in a piece of ground $2\frac{1}{8}$ acres in extent, and surrounded by brick walls, used part of the land as an ornamental garden, and the other part as a nursery garden for trade purposes, and a company proposed to take, without actually touching the house, the nursery greenhouses and a part of the land which had been planted and used for ornamental purposes, they were obliged to take the whole of the land (*Salter v. Metrop. Dist. Ry. Co.*, 1870, 9 Eq. 432). But in *Fulkner v. Somerset, &c. Ry. Co.* (1873, 16 Eq. 458), land adjacent to a cottage, which had been used as a market garden, was held to be a field and not a garden. Nursery and ornamental garden.

In another case the landowner was the owner of a leasehold house in H. Street, and of five freehold cottages in B. Row, which ran parallel to H. Street, the yards at the back of the cottages abutting on the back yard and buildings held with the houses in H. Street. The landowner used the house in H. Street as a dwelling-house and shop, and the buildings behind it as a candle manufactory, candle store, bakehouse, bread store, and provision store. One of the cottages in B. Row was turned into a storehouse, and was made to communicate with the H. Street premises, and was used as a back entrance to them. A company gave notice to treat for the five cottages in B. Row and the yards behind them. The landlord gave a counter notice that the land proposed to be taken was part of premises occupied by him as a manufactory, and requiring the company to take the whole. The premises were held by the Court of Appeal to be one house, and by Brett, L. J., also to be one manufactory (*Richards v. Swansea Improvement Co.*, 1878, L. R. 9 C. D. 425). Cottages abutting on back of house.

Two adjoining houses, with internal communication, were held upon separate leases of the same date from the same lessor. The lessee, for the purposes of his business, necessarily used the two houses as one. It was held that Adjoining houses used together.

Section 92. the two houses constituted one entire house under sect. 92, upon the ground that the lessee could not carry on his business if the company took one house only (*Siegenberg v. Metrop. Dist. Ry. Co.*, 1884, 32 W. R. 333).

A metropolitan vestry required, for the purpose of widening a street, a part of the buildings and site of an orphanage that would leave a substantial part of the premises. It was held under sect. 80 of 57 Geo. 3, c. xxix., that if the owners were willing to sell the part only, the vestry could not take the whole (*Teuliere v. St. Mary Abbotts*, 1885, 30 C. D. 642). On the contrary the vestry can take a part only, provided the use of the remainder is not materially prejudiced (*Gordon v. St. Mary Abbotts*, 1894, 2 Q. B. 742; *Aldis v. Corp. of London*, 1899, 2 Ch. 169; *Gibbon v. Paddington Vestry*, 1900, 44 Sol. Journ. 674).

Land held
under
different
leases.

Where a house and part of the garden are held under one lease, and the other part of the garden under another, the company must take the whole (*Macgregor v. Met. Ry. Co.*, 1866, 14 L. T. 354).

Premises
held for
personal
conveni-
ence.

But the principle does not apply to land which is not necessary for the convenient occupation of the house, but is held for the personal enjoyment of the occupier. The owner and occupier of a house and six acres of meadow land on the west side of a road having a large family, and the ground which he occupied with his house being insufficient for the horses and cows which he kept for their use, bought six and a quarter acres on the other side of the road, of which the nearest point was distant 120 yards from his entrance gate. At such nearest point were a cow-house, loose box, and a cottage which was occupied by his grooms, because he had no accommodation for them on his side of the road. The six and a quarter acres were held not to be part of his house (*Steele v. Mid. Ry. Co.*, 1866, 1 Ch. 275).

A company gave notice to treat for a piece of land which was held under the same lease with a house and garden, from which it was separated by a road formerly private, but then public. The lessee had covenanted not to build upon it and to use it only for purposes of recreation. It was held that the lessee was not entitled to compel the company to purchase also his house and garden. Under the house, the garden and curtilage would pass, but not additional land held for pleasure only and not necessity (*Fergusson v. L. B. & S. C. Ry. Co.*, 1863, 33

Beav. 103, 3 D. J. & S. 653; *Pulling v. L. C. & D. Ry. Co.*, 1864, 33 Beav. 644; 3 D. J. & S. 661). Section 92.

And in the following cases also premises have been held not to fall within the description of "part of a house":— Cases of not "part of a house."

Prior to 1890 a mansion house and grounds, and a private road forming the approach thereto, formed part of the T. estate. In 1890 the then owners conveyed to the plaintiff the mansion house and grounds and the site of the private road, reserving to themselves a right of way over the road. A railway company served a notice to treat for a portion of the road. It was held that this portion did not form part of the "house" within sect. 92, so as to entitle the plaintiff to require the company to take the whole house and grounds. The land did not fairly come within the description "part of any house," extensively as that description had been construed by some of the decisions (*Allhusen v. Ealing, &c. Ry. Co.*, 1898, 46 W. R. 483).

A. was the owner of a piece of land fronting a private road on which he had built for himself a dwelling-house. He afterwards bought land fronting the same road on the other side, on part of which he built stables, coach-house, and a greenhouse. He laid out the rest as a garden, and he used the whole with and as part of his residence. A railway company gave notice to treat for the land on which the stables, &c. were situate. It was held that they could not be compelled to take the dwelling-house also, upon the ground that a conveyance or devise of the house only would not have passed the stables and garden (*Kerford v. Seacombe, &c. Ry. Co.*, 1888, 36 W. R. 431).

Two semi-detached villas were covered with one roof, and between the ceiling of the top floor rooms and this roof was a continuous space; the party wall, which was very unsubstantial, being only carried up to the ceiling. Otherwise there was no internal communication, but the outside spouting and drains were continuous through the length of both villas. A company were allowed to take one villa without taking the other (*Harrie v. S. Devon Ry. Co.*, 1875, 23 W. R. 202). Unsubstantial party wall.

Land not at the time of notice to treat, or previously, appurtenant to a house is not part of it. Therefore, where a lessee of a house had acquired a right to obtain at a future time a lease of land in the rear of his house for the purpose of extending his garden, but before the time Land not appurtenant at date of notice to treat.

Section 92. arrived received notice to treat, the land was held not to form part of his house (*Chambers v. L. C. & D. Ry. Co.*, 1863, 1 N. R. 517).

**Manu-
factory.**

A manufacture means producing something from raw material; and even if the blending and other processes necessary for producing a special brand of tea constitute a manufactory, yet the premises where this is done, and neighbouring but separate premises where packing requisites are made and the tea is packed and delivered to customers, are not parts of one manufactory (*Benington & Sons v. Metrop. B. W.*, 1886, 54 L. T. 837).

Where land is employed for the purposes of a business not involving manufacture, but portions of it are used for auxiliary manufacturing processes, the whole is not a "manufactory" within this Act. Where, therefore, a dust contractor used a large piece of land for the purpose of collecting and disposing of the contents of dust heaps, one portion being used as a sorting place, another for the conversion of parts of the heaps into cement, and another for converting other parts into manure, it was held that under this Act the first-mentioned portion might be taken compulsorily without the rest (*Reddin v. Metrop. B. W.*, 1862, 4 D. F. & J. 532).

Land included in the same wall with tinplate works, and used for the deposit of ashes, is "part of a manufactory," although the two portions are separated by a road over which a stranger has a right of way (*Sparrow v. Oxford, &c. Ry. Co.*, 1852, 2 D. M. & G. 94).

Where a manufactory was worked by water power, a reservoir and the channel to the river from which the water was supplied, with the apparatus for regulating the flow of water, were held to be parts of the manufactory (*Furniss v. Mid. Ry. Co.*, 1868, 6 Eq. 473).

**Trade
fixtures.**

Trade fixtures are part of a manufactory, and the company can be required to take them under this section, notwithstanding that they would be removable by the tenant (*Gibson v. Hammersmith Ry. Co.*, 1863, 32 L. J. Ch. 337, 11 W. R. 299).

**Resi-
dential
part of
premises.**

Part of a house was used for the purposes of a manufactory, and the other part was let to an under-tenant and not so used. It was held that the latter part was part of a manufactory under this section. Where a railway company propose to take part of a building, part of which building is used as a manufactory, they are in substance

claiming to take part of a manufactory within the fair meaning of sect. 92 (*Brook v. M. S. & L. Ry. Co.*, 1895, 2 Ch. 571, 575). Section 92.

Cottages separated from a manufactory by a road, but which were the only warehouses in connection with the manufactory, have been held to be part of it (*Spackman v. G. W. Ry. Co.*, 1855, 1 Jur. N. S. 790; but it was doubted as to the dwelling-house of the manufacturer; see *Re London & Greenwich Ry. Co.*, 1842, 3 Ry. Cas. 138). Cottages.

2. Counter-notice.

The landowner cannot under the section require the company to take a further part of the property not amounting with the part in question to the whole. He cannot insist that some portion shall be taken as part of a house, and that another portion in precisely the same position shall not be taken (*Pulling v. L. C. & D. Ry. Co.*, 1864, 33 Beav. 644; 3 D. J. & S. 661). Counter-notice must be for whole of premises.

A landowner who, upon being served with notice to treat for a part of his property, replies by claiming a given sum for that part is not precluded, if the sum be refused, from requiring the company to take the whole under this section (*Gardner v. Charing Cross Ry. Co.*, 1861, 2 J. & H. 248). Landowner whose claim for part is refused may then give counter-notice.

It is sufficient that the landowner should specify the premises which he requires the company to take, without specifying whether he makes the claim on the ground that they are a "house," or a "building," or a "manufactory" (*Richard v. Swansea Improvement Co.*, 1878, 9 C. D. 425). Description of premises.

A notice by bill in equity that the landowner required the whole of the premises to be taken was under the circumstances allowed to be good (*Spackman v. G. W. Ry. Co.*, 1855, 1 Jur. N. S. 790). Notice in suit.

After notice to treat for a part, the surveyors of the parties met, and it was verbally agreed that the company would take the whole, but there was no written counter-notice. On the company entering into possession of part only under sect. 85, it was held that the landowner was entitled to the costs of an injunction to restrain them from so doing and to compel them to take the whole (*Binney v. Hammersmith, &c. Ry. Co.*, 1863, 9 Jur. N. S. 773). Verbal agreement to take whole.

The acceptance by the solicitors of a railway company Accept-

Section 92.

ance of
counter-
notice by
solicitors
of com-
pany.

Where
counter-
notice bad.

Abandon-
ment of
original
notice.

of a counter-notice to take property which the company are not compellable to take under the Act is not binding on the company. To bind the company there must be under sect. 97 of the Comp. Clauses Act, 1845, an agreement in writing signed by a committee of directors to make contracts, or by the directors or any two of them (*Treadwell v. L. & S. W. Ry. Co.*, 1885, 33 W. R. 272).

If the counter-notice is bad, the company may disregard it (*Loosemore v. Tiverton, &c. Ry. Co.*, 1882, 22 C. D. 25; 9 App. Cas. 480). They are not bound to wait for a proper counter-notice to be given, but till this is done they can proceed on the original notice (*Harvie v. S. Devon Ry. Co.*, 1875, 23 W. R. 202).

Upon service of the counter-notice the company may abandon their original notice, and refuse to take any part of the property (*Ex p. Quicke*, 1865, 13 W. R. 924; *King v. Wycombe Ry. Co.*, 1860, 28 Beav. 104; *Reg. v. L. & S. W. Ry. Co.*, 1848, 12 Q. B. 775); and this applies to all the premises included in the original notice. Thus notice was given to treat for a house A. and for a strip of land at the back of the garden of A. which had been thrown into the garden of the adjoining house B. The owner of A. & B. gave a counter-notice to the company to take the whole of B. Thereupon the company gave notice abandoning the notice to treat. It was held that the landowner could not then treat the notice as subsisting in respect of A. and recover compensation awarded by his arbitrator in respect of that house alone. The original notice was one notice and not two (*Thompson v. Tottenham, &c. Ry. Co.*, 1892, 67 L. T. 416).

The mere notice by the company, after receipt of a counter-notice, of their intention to apply for the appointment of a surveyor to determine the value of the property does not debar them from withdrawing the notice to treat (*Grierson v. Cheshire Lines Committee*, 1874, 19 Eq. 83).

Assent by
company
to counter-
notice.

Where there has been notice to take a part of premises, a counter-notice by the landowner to take the whole, and a subsequent assent by the company to take the whole, the relation of vendor and purchaser is created as to the whole. Hence it is not necessary that a second formal notice to treat for the whole should be served under sect. 18, though the want of such notice makes it difficult to see how the term of twenty-one days mentioned in sect. 21 is to be

dealt with in such a case. Apparently that term does not apply where a counter-notice is given under sect. 92; but there is enough in sect. 21 to show that, after an assent by the company to take the whole of the land under the counter-notice, an opportunity must be given to the landowner to agree with the company before a jury is summoned (*Schuinge v. London & Blackwall Ry. Co.*, 1855, 3 Sm. & G. pp. 40, 41). Section 92.

It seems that where a valid notice has been given to take part of a house or manufactory, and on that a valid counter-notice has been given to take the whole, and the notice has not been withdrawn, the notice and counter-notice will be treated as constituting one notice for the purpose of enabling the jury to assess the value of the property forming the subject-matter of the notice and counter-notice (*Pinchin v. London & Blackwall Ry. Co.*, 1854, 5 D. M. & G. 851).

Where there had been a litigation under this section disposed of by a decree, and no question was raised by the company as to whether or not they were bound to fulfil the contract, and the decree had settled that they were bound to purchase the whole property, they were not allowed afterwards to dispute the existence of a binding contract, but were compelled to do all that was necessary to give full effect to the decree, including ascertainment of the compensation and conveyance (*Marson v. L. C. & D. Ry. Co.*, 1869, 7 Eq. 546). Judgment against company.

3. Exclusion of sect. 92.

In consequence of the difficulties caused by the requirement that the company shall take the whole of the property the special Act now usually contains a clause that— “Material detriment” clause.

Notwithstanding sect. 92 of the Lands Clauses Act, 1845, the owners of and other persons interested in the houses or other buildings or manufactories described in the schedule to the Act, and whereof parts only are required for the purposes of the Act, may, if such portions can, in the opinion of the jury, arbitrators, or other authority to whom the question of disputed compensation shall be submitted, be severed from the remainder of such properties without material detriment

Section 92.

thereto, be required to sell and convey to the company the portions only of the premises so required, without the company being obliged or compellable to purchase the whole or any greater portion thereof, the company paying for the portions required by them and making compensation for any damage sustained by the owners thereof and other persons interested therein by severance or otherwise.

Where the special Act contains this clause the warrant for summoning the jury should raise two issues:—(1) Whether the portion can be severed without serious detriment to the property, and, if so, (2) the amount of compensation to be paid, including damages for severance. But if (1) is decided against the company they may abandon the notice to treat, and then apparently the landowner gets no costs (*Morrison, Wood & Co. v. G. E. Ry. Co.*, 1885, 53 L. T. 384).

Considerations affecting "material detriment."

Under a special Act containing such a clause, the company gave notice to treat for a portion of a factory and also for land over which lay the only access for vehicles from the public highway to the factory. The intention of the company was to build a viaduct over the land to carry the railway and sufficient access to the factory could be given through an arch of the viaduct. Under sect. 68 of the R. C. A. 1845, they would be bound to provide such access as an accommodation work. It was held that, in considering the question of "material detriment," an arbitrator was entitled to take this obligation into consideration; and also, it would seem, the fact that, apart from sect. 68, the company had power and were willing to grant a perpetual right of way through the arch (*Re Arbitration between Gonty and M. S. & L. R. Co.*, 1896, 2 Q. B. 439).

In another case, under a special Act with a similar clause, the company gave notice to take land which formed the access to warehouses. The submission to arbitration contained the question as to material detriment. Before the arbitrator the company offered to allow access under a bridge which was to be made over the part taken. The arbitrator found there would be material detriment, and awarded compensation on the assumption that the company were bound to take the whole of the property. It was held that whether the arbitrator was right or wrong in declining to take the offer of the company into considera-

tion, his award, until set aside by proper process, was Section 92. binding on the Court and could not be reviewed. No opinion was expressed on either of the points decided in *Gonty v. M. S. & L. Ry. Co.* (*supra*), but that case was said not to conflict with *Ayr Harbour Trustees v. Oswald* (1883, 8 App. Cas. 623), because there the undertaking tendered was *ultra vires* of the trustees (*Caledonian Ry. v. Turcan*, 1898, A. C. 256, per Lord Watson, p. 266).

INTERSECTED LANDS.

And with respect to small portions of intersected land, be it enacted as follows:—

§ 93. Where Lands not in a Town and of less than Half an Acre are severed, Owner may require Sale or Company to Pay Costs of throwing it into his adjoining Land.

§ 94. If Expense of making Communications exceed Value of Land, Company may insist on Sale.

Where Lands not in a Town and of less than Half an Acre are severed, Owner may require Sale or Company to Pay Costs of throwing it into his adjoining Land.

Section 93.

Where by intersection of lands not in a town or built upon, less than half an acre is left on either side, owner may require promoters to purchase same, unless owner has other land into which it can be conveniently thrown: in which case promoters must at their own expense effect the connection.

XCIH. If any lands, not being situate in a town or built upon, shall be so cut through and divided by the works as to leave, either on both sides or on one side thereof, a less quantity of land than half a statute acre, and if the owner of such small parcel of land require the promoters of the undertaking to purchase the same along with the other land required for the purposes of the special Act, the promoters of the undertaking shall purchase the same accordingly, unless the owner thereof have other land adjoining to that so left into which the same can be thrown, so as to be conveniently occupied therewith; and if such owner have any other land so adjoining, the promoters of the undertaking shall, if so required by the owner, at their own expense, throw the piece of land so left into such adjoining land, by removing

the fences and levelling the sites thereof, and by Section 93.
soiling the same in a sufficient and workmanlike
manner.

As to what is a "town" within the meaning of this section, see cases under sect. 128.

A submission to arbitration to ascertain the value of lands taken, and also of portions under this section, should refer expressly to such portions (*Re N. Staff. Ry. Co. & Wood*, 1848, 2 Ex. 244).

*If Expense of making Communications exceed Value
of Land, Company may insist on Sale.*

XCIV. If any such land shall be so cut through Section 94.
and divided as to leave on either side of the works
a piece of land of less extent than half a statute
acre, or of less value than the expense of making
a bridge, culvert, or such other communication be-
tween the land so divided as the promoters of the
undertaking are, under the provisions of this or
the special Act, or any Act incorporated therewith,
compellable to make, and if the owner of such
lands have not other lands adjoining such piece of
land, and require the promoters of the undertaking
to make such communication, then the promoters
of the undertaking may require such owner to sell
to them such piece of land; and any dispute as to
the value of such piece of land, or as to what
would be the expense of making such communica-
tion, shall be ascertained as herein provided for
cases of disputed compensation; and on the occa-
sion of ascertaining the value of the land required
to be taken for the purposes of the works the jury
or the arbitrators, as the case may be, shall, if
required by either party, ascertain by their verdict
or award the value of any such severed piece of

Where by intersection of lands a piece of land is left on either side less than half an acre or of less value than expense of communication and owner requires communication, promoters may require owner to sell: award or verdict, if either party require, to show value of land and also expense of communication.

Section 94. land, and also what would be the expense of making such communication.

Applica-
tion of
section.

The word "such" in this section refers to intersected lands generally, and not merely to those not being in a town (*Eastern Counties Ry. Co. v. Marriage*, 1860, 9 H. L. C. 32; *Falls v. Belfast, &c. Ry. Co.*, 1849, 12 Ir. L. R. 233).

In a case where the land was adjacent to the sea-shore, and the accommodation works were required, not solely for the purpose of connecting the severed pieces of land, but for the use and enjoyment thereof for the purpose of bathing, fishing, boating, and other personal conveniences which were not the subject of compulsory compensation, it was held that this section did not apply, and that accommodation works must be executed under R. C. A. 1845, s. 68 (*Falls v. Belfast, &c. Ry. Co.*, 1849, 12 Ir. L. R. 233).

Costs of
inquiry.

Sect. 51 is not incorporated in this section. Consequently, where the company requiring to purchase the severed portion made no offer before the inquiry, and the jury found the land of less value than the cost of the accommodation works, the landowner was held not to be entitled to his costs of inquiry (*Cobb v. Mid-Wales Ry. Co.*, 1866, L. R. 1 Q. B. 342).

COPYHOLD LANDS.

And with respect to copyhold lands, be it enacted as follows:—

§ 95. Enrolment and Effect of Conveyance. Fees.

§ 96. Enfranchisement.

§ 97. By Lord of Manor, or in certain Cases by Deed Poll.

§ 98. Apportionment of Rents and its Effect.

Enrolment and Effect of Conveyance. Fees.

XCV. Every conveyance to the promoters of the undertaking of any lands which shall be of copyhold or customary tenure, or of the nature thereof, shall be entered on the rolls of the manor of which the same shall be held or parcel; and on payment to the steward of such manor of such fees as would be due to him on the surrender of the same lands to the use of a purchaser thereof he shall make such enrolment; and every such conveyance, when so enrolled, shall have the like effect in respect of such copyhold or customary lands, as if the same had been of freehold tenure; nevertheless, until such lands shall have been enfranchised by virtue of the powers hereinafter contained, they shall continue subject to the same fines, rents, heriots, and services as were theretofore payable and of right accustomed.

Section 95.

Conveyance of copyholds to promoters to be entered on Court rolls; fees as on a surrender to be paid to steward; conveyance when enrolled to have same effect as if lands were freehold save that, till enfranchisement, lands are subject to fines, &c.

The steward of the manor is entitled only to the fee on Steward's surrender, not to a fee on admittance (*Cooper v. Norfolk Ry. Co.*, 1849, 3 Exch. 546).

Section 95.**Fine.**

The lord of the manor is not entitled to any fine from the company as upon admittance; nor can he obtain compensation under sect. 96 in respect of the loss of the fine which would have been received had there been a surrender and admittance (*Ecc. Commissioners v. L. & S. W. Ry. Co.*, 1854, 2 W. R. 560; *Cooper v. Norfolk Ry. Co.*, *supra*).

*Enfranchisement.***Section 96.**

Within 8 months after enrolment of conveyance, or within one month of entry (whichever first happens), promoters to procure enfranchisement, and pay the lord compensation as agreed or ascertained; compensation to include loss in respect of fines, &c.

XCVI. Within three months after the enrolment of the conveyance of any such copyhold or customary lands, or within one month after the promoters of the undertaking shall enter upon and make use of the same for the purposes of the works, whichever shall first happen, or if more than one parcel of such lands holden of the same manor shall have been taken by them, then within one month after the last of such parcels shall have been so taken or entered on by them, the promoters of the undertaking shall procure the whole of the lands holden of such manor so taken by them to be enfranchised, and for that purpose shall apply to the lord of the manor whereof such lands are holden to enfranchise the same, and shall pay to him such compensation in respect thereof as shall be agreed upon between them and him, and if the parties fail to agree respecting the amount of the compensation to be paid for such enfranchisement the same shall be determined as in other cases of disputed compensation; and in estimating such compensation the loss in respect of the fines, heriots, and other services payable on death, descent, or alienation, or any other matters which would be lost by the vesting of such copyhold or customary lands in the promoters of the undertaking, or by the enfranchisement of the same, shall be allowed for.

As to compensation for loss of fine which would be payable if the company were admitted, see under sect. 95.

Formerly the Copyhold Enfranchisement Acts, 1852 and 1858, did not apply to purchases under this section, and it is apparently the same with the Copyhold Act, 1894. A tenant for life of the manor must allow the whole compensation money, including any compensation for the fine paid on the admittance of the company (though not legally enforceable against the company) and any additional compensation money paid in respect of a right claimed by him as tenant for life, to enure for the benefit of the estate (*Re Wilson*, 1862, 2 J. & H. 619; on appeal, 11 W. R. 295).

Section 96.
 Tenant for life and remainderman.

In 1873 a railway company took copyhold land and erected works thereon. In 1875 a deed of conveyance under sect. 95 was entered on the Court rolls. In 1887 the lord required the company to enfranchise and pay him compensation. By the custom of the manor a fine of two years' improved annual value was payable on the death of lord or tenant, and a fine of three years' improved annual value on alienation. It was held that, since the obligation to enfranchise arose at the expiration of one month from entry by the company, or of three months from the enrolment of the conveyance, whichever should first happen, compensation was to be assessed as at that period, without regard to the subsequent improvements made by the company; but that the lord was entitled to the fines which had since become payable, assessed according to the improved annual value (*Louther v. Caledonian Ry. Co.*, 1892, 1 Ch. 73; *Re Marquis of Salisbury and L. & N. W. Ry. Co.*, 1879, *ib.* p. 75, n.).

Measure of compensation when enfranchisement delayed.

As to inserting in the enfranchisement deed an acknowledgment of right to production of the title deeds of the manor and the court rolls relating to the lands enfranchised, and an undertaking for safe custody, see *Re Agg-Gardner* (1884, 25 C. D. 600).

Production of deeds.

Enfranchisement by Lord of Manor, or in certain Cases by Deed Poll.

XCVII. Upon payment or tender of the compensation so agreed upon or determined, or on deposit thereof in the Bank in any of the cases hereinbefore in that behalf provided, the lord of the manor whereof such copyhold or customary

Section 97.
 Upon payment of compensation or deposit in Bank, lord is to enfranchise lands;

Section 97. in default, or if lord fails to show title, promoters may enfranchise by deed poll. lands shall be holden shall enfranchise such lands, and the lands so enfranchised shall for ever thereafter be held in free and common soccage; and in default of such enfranchisement by the lord of the manor, or if he fail to adduce a good title thereto to the satisfaction of the promoters of the undertaking, it shall be lawful for them, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them, and thereupon the lands in respect of the enfranchisement whereof such compensation shall have been deposited as aforesaid shall be deemed to be enfranchised, and shall be for ever thereafter held in free and common soccage.

Apportionment of Rent and its Effect.

Section 98. Rents of copyhold lands to be apportioned by agreement or by justices; & lands not taken to be subject only to apportioned rents. XCVIII. If any such copyhold or customary lands be subject to any customary or other rent, and part only of the land subject to any such rent be required to be taken for the purposes of the special Act, the apportionment of such rent may be settled by agreement between the owner of the lands and the lord of the manor on the one part, and the promoters of the undertaking on the other part, and if such apportionment be not so settled by agreement, then the same shall be settled by two justices; and the enfranchisement of any copyhold or customary lands taken by virtue of this or the special Act, or the apportionment of such rents, shall not affect in other respects any custom by or under which any such copyhold or customary lands not taken for such purposes shall be held; and if any of the lands so required be released from any portion of the rents to which they were subject jointly with any other lands, such last-mentioned lands shall be charged with

the remainder only of such rents; and with refer- Section 98.
ence to any such apportioned rents, the lord of
the manor shall have all the same rights and
remedies over the lands to which such apportioned
rent shall have been assigned or attributed as he
had previously over the whole of the lands subject
to such rents for the whole of such rents.

COMMON AND WASTE LANDS.

And with respect to any such lands being common or waste lands, be it enacted as follows :—

§ 99. Mode of ascertaining and Payment of Compensation where Right to Soil belongs to Persons other than the Commoners.

§ 100. Conveyance, or in certain Cases Deed Poll, and its Effect.

§ 101. Mode of ascertaining Compensation due to Commoners.

§ 102. Meeting to be convened of Parties interested.

§ 103. Meeting by Vote to appoint a Committee.

§ 104. Agreement by Committee, and its Effect. Powers of Committee.

§ 105. In Default of Agreement, Compensation to be ascertained as in other Cases.

§ 106. Where no Committee appointed, Amount to be settled by Surveyor.

§ 107. Payment or Deposit of Money. Deed Poll and its Effect. Application of Money if paid into Court.

Mode of ascertaining and Payment of Compensation where Right to Soil belongs to Persons other than the Commoners.

Section 99.

Where there are rights of common, compensation for right in soil to be paid to lord, & compensation for commonable rights to be paid as provided in case of common rights in soil. On payment or deposit in

XCIX. The compensation in respect of the right in the soil of any lands subject to any rights of common shall be paid to the lord of the manor, in case he shall be entitled to the same, or to such party, other than the commoners, as shall be entitled to such right in the soil; and the compensation in respect of all other commonable and other rights in or over such lands, including therein any commonable or other rights to which the lord of the manor may be entitled, other than

his right in the soil of such lands, shall be determined and paid and applied in manner hereinafter provided with respect to common lands the right in the soil of which shall belong to the commoners; and upon payment or deposit in the Bank of the compensation so determined all such commonable and other rights shall cease and be extinguished.

Section 99.

Bank, commonable rights to cease.

If the company take possession of land over which there are rights of common, and construct their works, without first having paid compensation to the commoners, the latter may maintain an action against the company for the disturbance of their rights. After payment of compensation to the lord of the manor, and conveyance by him, the company stand in the place of the lord and must follow the procedure of the statute to get the rights of the commoners extinguished (*Stoneham v. L. B. & S. C. Ry. Co.*, 1871, L. R. 7 Q. B. 1).

Entry before compensation paid to commoners.

As to compensation in respect of rights of turbary held under an Inclosure Act in trust for the occupiers of cottages, see *Re Christchurch Inclosure Act* (1887, 38 C. D. 520; 1893, A. C. 1).

Rights of turbary.

By an Inclosure Act commissioners were empowered to allot lands in severalty to the lord and other persons interested, and also to allot to the lord in trust for the occupiers of certain cottages (who had been accustomed to cut turf in the wastes of the manor) portions of the waste for a turf common. Part of the land allotted for the turf common was taken by a railway company. It was held that, upon the true construction of the Act, the lord of the manor was not deprived of his rights as owner of the soil of the turf common, and was entitled to so much of the purchase money as represented those rights (*S. C.*, *sub nom. A.-G. v. Meyrick*, 1893, A. C. 1).

Conveyance by Lord of Manor, or Person entitled to Right to Soil, or in certain Cases Deed Poll, and its Effect.

C. Upon payment or tender to the lord of the manor, or such other party as aforesaid, of the compensation which shall have been agreed upon or

Sect. 100.

On payment of compensation for

Sect. 100. determined in respect of the right in the soil of any such lands, or on deposit thereof in the Bank in any of the cases hereinbefore in that behalf provided, such lord of the manor, or such other party as aforesaid, shall convey such lands to the promoters of the undertaking, and such conveyance shall have the effect of vesting such lands in the promoters of the undertaking, in like manner as if such lord of the manor, or such other party as aforesaid, had been seised in fee simple of such lands at the time of executing such conveyance; and in default of such conveyance it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them, and thereupon the lands in respect whereof such last-mentioned compensation shall have been deposited as aforesaid shall vest absolutely in the promoters of the undertaking, and they shall be entitled to immediate possession thereof, subject nevertheless to the commonable and other rights theretofore affecting the same, until such rights shall have been extinguished by payment or deposit of the compensation for the same in manner hereinafter provided.

right in soil, or deposit in Bank, lord to convey as though seised in fee; in default, promoters may vest lands in themselves by deed poll, subject to rights of common till extinguished by payment or deposit.

Sect. 101.

Mode of ascertaining Compensation due to Commoners.

Compensation for common rights in soil, or other commonable rights, to be determined by agreement between promoters and committee of commoners.

CI. The compensation to be paid with respect to any such lands, being common lands, or in the nature thereof, the right to the soil of which shall belong to the commoners, as well as the compensation to be paid for the commonable and other rights in or over common lands the right in the soil whereof shall not belong to the commoners, other than the compensation to the lord of the manor, or other party entitled to

the soil thereof, in respect of his right in the soil thereof, shall be determined by agreement between the promoters of the undertaking and a committee of the parties entitled to commonable or other rights in such lands, to be appointed as next hereinafter mentioned. Sect. 101.

This section and sects. 102—106 are not imperative, so as to preclude specific performance of an agreement entered into in a mode not provided by them (*Bee v. Stafford, &c. Ry. Co.*, 1875, 23 W. R. 868). Not imperative.

Meeting to be convened of Parties interested.

CII. It shall be lawful for the promoters of the undertaking to convene a meeting of the parties entitled to commonable or other rights over or in such lands to be held at some convenient place in the neighbourhood of the lands, for the purpose of their appointing a committee to treat with the promoters of the undertaking for the compensation to be paid for the extinction of such commonable or other rights; and every such meeting shall be called by public advertisement, to be inserted once at least in two consecutive weeks in some newspaper circulating in the county or in the respective counties and in the neighbourhood in which such lands shall be situate, the last of such insertions being not more than fourteen nor less than seven days prior to any such meeting; and notice of such meeting shall also, not less than seven days previous to the holding thereof, be affixed upon the door of the parish church where any such meeting is intended to be held, or if there be no such church, some other place in the neighbourhood to which notices are usually affixed; and if such lands be parcel, or holden of a manor, a like notice shall be given to the lord of such manor. Sect. 102.
Promoters may convene meeting of commoners to appoint committee.

Advertisements of meeting.

Meeting by Vote to appoint a Committee.

Sect. 103. CIII. It shall be lawful for the meeting so called to appoint a committee, not exceeding five in number, of the parties entitled to any such rights, and at such meeting the decision of the majority of the persons entitled to commonable rights present shall bind the minority and all absent parties.

Majority
at meeting
to bind
minority
and absent
parties.

Agreement by Committee, and its Effect. Powers of Committee.

Sect. 104. CIV. It shall be lawful for the committee so chosen to enter into an agreement with the promoters of the undertaking for the compensation to be paid for the extinction of such commonable and other rights, and all matters relating thereto, for and on behalf of themselves and all other parties interested therein; and all such parties shall be bound by such agreement; and it shall be lawful for such committee to receive the compensation so agreed to be paid, and the receipt of such committee, or of any three of them, for such compensation, shall be an effectual discharge for the same; and such compensation, when received, shall be apportioned by the committee among the several persons interested therein, according to their respective interests, but the promoters of the undertaking shall not be bound to see to the apportionment or to the application of such compensation, nor shall they be liable for the misapplication or non-application thereof.

Committee
may agree
for, re-
ceive, and
apportion
compen-
sation.

Freemen
of a
borough
entitled
as com-
moners.

Where land was held by the corporation of a town as common land in trust for the freemen of the borough as commoners in respect of a right for a certain time each year to turn upon the land one head of stock, subject to a payment annually fixed by the town council, the Court

held that the present freemen were not entitled to divide the money and the purchase money was ordered to be re-invested in other land to be held in trust for the freemen resident in the borough, and until such re-investment to be invested, and the dividends paid to the commoners, each receiving his share at the time when his right to turn out his one head of stock began (*Nash v. Coombs*, 1868, 6 Eq. 51).

Sect. 104.

Where bye-laws made one provision for the exercise of rights of common by copyholders and freeholders, and another provision for the exercise of these rights by occupiers, copyholders and freeholders who were also occupiers were held entitled to a share in the compensation money in proportion only to their rights as copyholders or freeholders, and not in proportion to their rights as occupiers (*Fox v. Amhurst*, 1875, 20 Eq. 403). Subsequently it was decided that occupiers as such were not entitled to share (*Austin v. Amhurst*, 1877, 7 C. D. 689).

Double claim, as copyholder and as occupier.

In Default of Agreement, Compensation to be ascertained as in other Cases.

CV. If upon such committee being appointed they shall fail to agree with the promoters of the undertaking as to the amount of the compensation to be paid as aforesaid, the same shall be determined as in other cases of disputed compensation.

Sect. 105.

If no agreement as to compensation, amount to be determined by arbitrators or jury.

Where no Committee appointed, Amount to be settled by Surveyor.

CVI. If, upon being duly convened by the promoters of the undertaking, no effectual meeting of the parties entitled to such commonable or other rights shall take place, or if, taking place, such meeting fail to appoint such committee, the amount of such compensation shall be determined by a surveyor, to be appointed by two justices, as hereinbefore provided in the case of parties who cannot be found.

Sect. 106.

In default of appointment of committee, compensation to be determined by surveyor appointed by justices.

Payment or Deposit of Money. Deed Poll and its Effect. Application of Money if paid into Court.

Sect. 107.

On payment or deposit of compensation, promoters may by deed poll vest lands in themselves free from commonable rights.

Court may make order as to payment of money deposited.

CVII. Upon payment or tender to such committee, or any three of them, or if there shall be no such committee then upon deposit in the Bank in the manner provided in the like case of the compensation which shall have been agreed upon or determined in respect of such commonable or other rights, it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them, and thereupon the lands in respects of which such compensation shall have been so paid or deposited shall vest in the promoters of the undertaking freed and discharged from all such commonable or other rights, and they shall be entitled to immediate possession thereof; and it shall be lawful for the Court of Chancery [*in * England or the Court of Exchequer in Ireland,*] by an order to be made upon petition, to order payment of the money so deposited to a committee to be appointed as aforesaid, or to make such other order in respect thereto, for the benefit of the parties interested, as it shall think fit.

Costs.

Out of a sum paid to a committee of commoners for compensation and costs, which on bill filed had been paid into Court, each commoner who in chambers established a claim to share in the funds was allowed three guineas for his costs (*Waterlow v. Burt*, 1870, 18 W. R. 683).

* Repealed by St. L. R. A. 1892.

LANDS SUBJECT TO MORTGAGE.

And with respect to lands subject to mortgage, be it enacted as follows:—

- § 108. Power to Redeem, and Mode of so doing.
- § 109. In Default of Conveyance or good Title, Money to be paid into Court, and Estate and Interest of Mortgagee to vest by Deed Poll in Company.
- § 110. Mode of ascertaining Compensation where Mortgage Debt exceeds Value of Lands.
- § 111. On Failure of Mortgagee to convey, or in Default of good Title, Deed Poll to be executed, and Money paid into Court.
- § 112. Mode of Settling Compensation where a Part only of Mortgaged Lands taken.
- § 113. In Default of Conveyance or good Title in above Case, Deed Poll to be executed as in former Cases.
- § 114. Costs. Compensation in certain Cases where Mortgage paid off before stipulated Time.

Power to Redeem, and Mode of so doing.

CVIII. It shall be lawful for the promoters of the undertaking to purchase or redeem the interest of the mortgagee of any such lands which may be required for the purposes of the special Act, and that whether they shall have previously purchased the equity of redemption of such lands or not, and whether the mortgagee thereof be entitled thereto in his own right or in trust for any other party, and whether he be in possession of such lands by virtue of such mortgage or not, and whether such mortgage affects such lands solely, or jointly with any other lands not required for the purposes of the special Act; and in

Sect. 108.

Promoters may redeem mortgages, whether equity of redemption purchased or not, & whether mortgage affects lands taken solely, or jointly with other lands; and may tender mortgage money with six months' interest, or may give six months' notice. Upon

Sect. 108.

payment or
tender,
mortgagee is
to convey.

order thereto the promoters of the undertaking may pay or tender to such mortgagee the principal and interest due on such mortgage, together with his costs and charges, if any, and also six months' additional interest, and thereupon such mortgagee shall immediately convey his interest in the lands comprised in such mortgage to the promoters of the undertaking, or as they shall direct; or the promoters of the undertaking may give notice in writing to such mortgagee that they will pay off the principal and interest due on such mortgage at the end of six months, computed from the day of giving such notice; and if they shall have given any such notice, or if the party entitled to the equity of redemption of any such lands shall have given six months' notice of his intention to redeem the same, then at the expiration of either of such notices, or at any intermediate period, upon payment or tender by the promoters of the undertaking to the mortgagee of the principal money due on such mortgage, and the interest which would become due at the end of six months from the time of giving either of such notices, together with his costs and expenses, if any, such mortgagee shall convey or release his interest in the lands comprised in such mortgage to the promoters of the undertaking, or as they shall direct.

Mort-
gagee's
costs.

Where the property is the subject of a foreclosure action, the mortgagee is only entitled to the ordinary inquiry as to what is due to him for costs, charges, and expenses properly incurred in relation to his security, and not to an express direction for the allowance of his extra costs of the compensation inquiry beyond those taxed between himself and the public body. He will apparently get such extra costs as just allowances under the ordinary inquiry (*Rees v. Metrop. B. W.*, 1880, 14 C. D. 372; see *Blachford v. Davis*, 1869, 4 Ch. 304, as to "just allowances").

Interest.

In the case of a compulsory purchase under this Act interest is payable to the vendor by the purchasers from

the time when a good title is shown, since possession might then be safely taken. If the land is subject to a mortgage, the vendor pays the mortgagee interest in lieu of notice. Sect. 108 confers on the company the right to redeem, but it does not relieve the vendor from the duty to give notice (*Spencer-Bell to L. & S. W. Ry. Co.*, 1885, 33 W. R. 771). Sect. 108.

In Default of Conveyance or Good Title, Money to be paid into Court, and Estate and Interest of Mortgagee to vest by Deed Poll in Company.

CIX. If, in either of the cases aforesaid, upon such payment or tender any mortgagee shall fail to convey or release his interest in such mortgage as directed by the promoters of the undertaking, or if he fail to adduce a good title thereto to their satisfaction, then it shall be lawful for the promoters of the undertaking to deposit in the Bank, in the manner provided by this Act in like cases, the principal and interest, together with the costs, if any, due on such mortgage, and also, if such payment be made before the expiration of six months' notice as aforesaid, such further interest as would at that time become due; and it shall be lawful for them, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them; and thereupon, as well as upon such conveyance by the mortgagee, if any such be made, all the estate and interest of such mortgagee, and of all persons in trust for him, or for whom he may be a trustee, in such lands, shall vest in the promoters of the undertaking, and they shall be entitled to immediate possession thereof in case such mortgagee were himself entitled to such possession. Sect. 109.

If mortgagee fails to convey or to show title, promoters may deposit in Bank principal, interest, and costs, and may by deed poll vest lands in themselves for the estate of the mortgagee.

Mode of ascertaining Compensation where Mortgage Debt exceeds Value of Lands.

Sect. 110.

If security is deficient, compensation to be settled between mortgagee and mortgagor on the one part and promoters on the other part; or in default of agreement, by arbitration or jury; & amount to be paid to mortgagee, who is to release lands.

CX. If any such mortgaged lands shall be of less value than the principal, interest, and costs secured thereon, the value of such lands, or the compensation to be made by the promoters of the undertaking in respect thereof, shall be settled by agreement between the mortgagee of such lands and the party entitled to the equity of redemption thereof on the one part, and the promoters of the undertaking on the other part; and if the parties aforesaid fail to agree respecting the amount of such value or compensation, the same shall be determined as in other cases of disputed compensation; and the amount of such value or compensation, being so agreed upon or determined, shall be paid by the promoters of the undertaking to the mortgagee, in satisfaction of his mortgage debt, so far as the same will extend; and upon payment or tender thereof the mortgagee shall convey or release all his interest in such mortgaged lands to the promoters of the undertaking, or as they shall direct.

Where mortgagees not bound by inquiry.

Where the mortgagees were not bound by the inquiry fixing the price, and the sum awarded was less than their debt, they were held to be entitled, in default of payment, to an assignment from the company and the landowner of the land comprised in their security (*Martin v. L. C. & D. Ry. Co.*, 1866, 1 Ch. 501).

Compensation for goodwill.

Where land, buildings, and fixtures were mortgaged, and a receiver in an action had been appointed with the consent of the mortgagees to carry on the business, compensation awarded in respect of loss of trade profits was held to be in the nature of compensation for the value of the goodwill of the business which passed with the premises to the mortgagees, and the amount was therefore payable to them (*Pile v. Pile, Ex p. Lambton*, 1876, 3 C. D. 36; *King v. Mid. Ry. Co.*, 1868, 17 W. R. 113).

But where the goodwill of a business depends on the

personal skill of the owner, it does not pass on a mortgage of the premises, and the owner is entitled to have an amount awarded in respect of goodwill paid to him notwithstanding that he has mortgaged (*Cooper v. Metrop. Board of Works*, 1883, 25 C. D. 472; see *Re South City Market Co.*; *Ex p. Bergin*, 1884, 13 L. R. Ir. 245). Sect. 110.

Refusal to convey, &c.

CXI. If upon such payment or tender as aforesaid being made any such mortgagee fail so to convey his interest in such mortgage, or to adduce a good title thereto to the satisfaction of the promoters of the undertaking, it shall be lawful for them to deposit the amount of such value or compensation in the Bank, in the manner provided by this Act in like cases; and every such payment or deposit shall be accepted by the mortgagee in satisfaction of his mortgage debt, so far as the same will extend, and shall be a full discharge of such mortgaged lands from all money due thereon; and it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them; and thereupon such lands, as to all such estate and interest as were then vested in the mortgagee, or any person in trust for him, shall become absolutely vested in the promoters of the undertaking, and they shall be entitled to immediate possession thereof in case such mortgagee were himself entitled to such possession; nevertheless, all rights and remedies possessed by the mortgagee against the mortgagor, by virtue of any bond or covenant or other obligation, other than the right to such lands, shall remain in force in respect of so much of the mortgage debt as shall not have been satisfied by such payment or deposit. Sect. 111.

If mortgagee fails to convey or to show title, promoters may deposit compensation in Bank, in full discharge of lands from mortgage; & may by deed poll vest estate of mortgagee in themselves, without prejudice to rights of mortgagee on covenants in respect of balance of debt.

*Mode of Settling Compensation where a Part only
of Mortgaged Lands taken.*

Sect. 112.

If part only of mortgaged lands is taken, & if such part is of less value than debt and remainder is not a sufficient security, then compensation for part taken to be settled by agreement, or determined by arbitration or jury, and paid to mortgagee who is to convey.

CXII. If a part only of any such mortgaged lands be required for the purposes of the special Act, and if the part so required be of less value than the principal money, interest, and costs secured on such lands, and the mortgagee shall not consider the remaining part of such lands a sufficient security for the money charged thereon, or be not willing to release the part so required, then the value of such part, and also the compensation (if any) to be paid in respect of the severance thereof or otherwise, shall be settled by agreement between the mortgagee and the party entitled to the equity of redemption of such land on the one part, and the promoters of the undertaking on the other; and if the parties aforesaid fail to agree respecting the amount of such value or compensation the same shall be determined as in other cases of disputed compensation; and the amount of such value or compensation, being so agreed upon or determined, shall be paid by the promoters of the undertaking to such mortgagee in satisfaction of his mortgage debt, so far as the same will extend; and thereupon such mortgagee shall convey or release to them, or as they shall direct, all his interest in such mortgaged lands the value whereof shall have been so paid; and a memorandum of what shall have been so paid shall be indorsed on the deed creating such mortgage, and shall be signed by the mortgagee; and a copy of such memorandum shall at the same time (if required) be furnished by the promoters of the undertaking at their expense, to the party entitled to the equity of redemption of the lands comprised in such mortgage deed.

In Default of Conveyance or good Title in above Case, Deed Poll to be executed as in former Cases.

CXIII. If upon payment or tender to any such mortgagee of the amount of the value or compensation so agreed upon or determined such mortgagee shall fail to convey or release to the promoters of the undertaking, or as they shall direct, his interest in the lands in respect of which such compensation shall so have been paid or tendered, or if he shall fail to adduce a good title thereto to the satisfaction of the promoters of the undertaking, it shall be lawful for the promoters of the undertaking to pay the amount of such value or compensation into the Bank, in the manner provided by this Act in the case of moneys required to be deposited in such Bank; and such payment or deposit shall be accepted by such mortgagee in satisfaction of his mortgage debt, so far as the same will extend, and shall be a full discharge of the portion of the mortgaged lands so required from all money due thereon; and it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them; and thereupon such lands shall become absolutely vested in the promoters of the undertaking, as to all such estate and interest as were then vested in the mortgagee, or any person in trust for him, and in case such mortgagee were himself entitled to such possession they shall be entitled to immediate possession thereof; nevertheless, every such mortgagee shall have the same powers and remedies for recovering or compelling payment of the mortgage money, or the residue thereof (as the case may be), and the interest

Sect. 118.

If mortgagee fails to convey or to show title, promoters may deposit compensation in Bank in full discharge of lands from mortgage, & may by deed poll vest lands in themselves for estate of mortgagee, without prejudice to remedy of mortgagee against other lands in his security.

Sect. 113. thereof respectively, upon and out of the residue of such mortgaged lands, or the portion thereof not required for the purposes of the special Act, as he would otherwise have had or been entitled to for recovering or compelling payment thereof upon or out of the whole of the lands originally comprised in such mortgage.

Costs. Compensation in certain Cases where Mortgage paid off before stipulated Time.

Sect. 114.

In case mortgage is for fixed period and is paid off before date, mortgagee to have costs of re-investment and compensation for loss of interest on new investment

CXIV. Provided always, that in any of the cases hereinbefore provided with respect to lands subject to mortgage, if in the mortgage deed a time shall have been limited for payment of the principal money thereby secured, and under the provisions hereinbefore contained the mortgagee shall have been required to accept payment of his mortgage money, or of part thereof, at a time earlier than the time so limited, the promoters of the undertaking shall pay to such mortgagee, in addition to the sum which shall have been so paid off, all such costs and expenses as shall be incurred by such mortgagee in respect of or which shall be incidental to the re-investment of the sum so paid off, such costs, in case of difference, to be taxed, and payment thereof enforced, in the manner herein provided with respect to the costs of conveyances; and if the rate of interest secured by such mortgage be higher than at the time of the same being so paid off can reasonably be expected to be obtained on re-investing the same, regard being had to the then current rate of interest, such mortgagee shall be entitled to receive from the promoters of the undertaking, in addition to the principal and interest hereinbefore provided for, compensation in respect of the loss to be sustained by him by reason of his mortgage money being

so prematurely paid off, the amount of such compensation to be ascertained, in case of difference, as in other cases of disputed compensation; and until payment or tender of such compensation as aforesaid the promoters of the undertaking shall not be entitled, as against such mortgagee, to possession of the mortgaged lands under the provision hereinbefore contained. Sect. 114.

The Court will restrain the company from pulling down buildings before the compensation due under this section to a mortgagee has been ascertained and paid or secured (*Ranken v. E. & W. India Docks & Birm., &c. Ry. Co.*, 1849, 12 Beav. 298, 305, *supra*, p. 259). Interference with premises.

It would seem that by not opposing a petition for investment in Consols, and payment of the dividends to the tenant for life, the company waive the right to pay off a mortgagee under this section (*Ex p. Peyton*, 1856, 4 W. R. 380). Waiver of right to pay off.

RENT-CHARGES.

And with respect to lands charged with any rent-service, rent-charge, or chief or other rent, or other payment or incumbrance not hereinbefore provided for, be it enacted as follows:—

§ 115. Compensation for Release of Lands taken to be ascertained as in other Cases.

§ 116. Apportionment or Release where Part only of Lands subject taken.

§ 117. Deed Poll and Deposit, as before, in Default of Conveyance or good Title.

§ 118. Continuance of Charge upon Lands not taken.

*Compensation for Release of Lands taken to be
ascertained as in other Cases.*

Sect. 115.

Compensation for release of lands from rent-charge, &c., to be determined, in case of difference, by arbitration or jury.

CXV. If any difference shall arise between the promoters of the undertaking and the party entitled to any such charge upon any lands required to be taken for the purposes of the special Act, respecting the consideration to be paid for the release of such lands therefrom, or from the portion thereof affecting the lands required for the purposes of the special Act, the same shall be determined as in other cases of disputed compensation.

*Apportionment or Release where Part only of
Lands subject taken.*

Sect. 116.

If part only of lands subject to charge is taken, charge

CXVI. If part only of the lands charged with any such rent service, rent-charge, chief or other rent, payment, or incumbrance, be required to be taken for the purposes of the special Act, the apportionment of any such charge may be settled by agreement between the party entitled to such

charge and the owner of the lands on the one part, and the promoters of the undertaking on the other part, and if such apportionment be not so settled by agreement the same shall be settled by two justices; but if the remaining part of the lands so jointly subject be a sufficient security for such charge, then, with consent of the owner of the lands so jointly subject, it shall be lawful for the party entitled to such charge to release therefrom the lands required, on condition or in consideration of such other lands remaining exclusively subject to the whole thereof.

Sect. 116.

may be apportioned by agreement, or by justices.

But if remainder of lands is sufficient security, with consent of owner, whole charge may be imposed on remainder exclusively.

As to deduction from the purchase-money where a rent-charge, affecting other land as well as that taken, is not released, see *Powell v. S. Wales Ry. Co.* (1855, 1 Jur. N. S. 773.)

Deed Poll and Deposit, as before, in Default of Conveyance or good Title.

CXVII. Upon payment or tender of the compensation so agreed upon or determined to the party entitled to any such charge as aforesaid, such party shall execute to the promoters of the undertaking a release of such charge; and if he fail so to do, or if he fail to adduce good title to such charge, to the satisfaction of the promoters of the undertaking, it shall be lawful for them to deposit the amount of such compensation in the Bank, in the manner hereinbefore provided in like cases, and also, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them, and thereupon the rent service, rent-charge, chief or other rent, payment, or incumbrance, or the portion thereof in respect whereof such compensation shall so have been paid, shall cease and be extinguished.

Sect. 117.

On payment of compensation, owner of charge to release it; in default, or if he fails to show title, promoter may deposit money in Bank and extinguish charge by deed poll.

*Continuance of Charge upon Lands not taken.***Sect. 118.**

Remaining
lands to con-
tinue subject
to whole or
part of
charge; and
promoters,
on tender of
deed creat-
ing charge,
to execute
indorsed
memoran-
dum show-
ing how
charge
affected by
release of
lands taken.

CXVIII. If any such lands be so released from any such charge or incumbrance, or portion thereof, to which they were subject jointly with other lands, such last-mentioned lands shall alone be charged with the whole of such charge, or with the remainder thereof, as the case may be, and the party entitled to the charge shall have all the same rights and remedies over such last-mentioned lands, for the whole or for the remainder of the charge, as the case may be, as he had previously over the whole of the lands subject to such charge; and if upon any such charge or portion of charge being so released the deed or instrument creating or transferring such charge be tendered to the promoters of the undertaking for the purpose, they or two of them shall subscribe, or if they be a corporation shall affix their common seal to a memorandum of such release indorsed on such deed or instrument, declaring what part of the lands originally subject to such charge shall have been purchased by virtue of the special Act, and if the lands be released from part of such charge, what proportion of such charge shall have been released, and how much thereof continues payable, or if the lands so required shall have been released from the whole of such charge, then that the remaining lands are thenceforward to remain exclusively charged therewith; and such memorandum shall be made and executed at the expense of the promoters of the undertaking, and shall be evidence in all Courts and elsewhere of the facts therein stated, but not so as to exclude any other evidence of the same facts.

LANDS SUBJECT TO LEASES.

And with respect to land subject to leases, be it enacted as follows :—

§ 119. Apportionment of Rent : its Mode and Effect.

§ 120. Compensation for Severance.

§ 121. Compensation to Tenants at Will, from Year to Year, &c.,
how determined.

§ 122. Production of Lease where greater Interest claimed.

Apportionment of Rent : its Mode and Effect.

CXIX. If any lands shall be comprised in a lease for a term of years unexpired, part only of which lands shall be required for the purposes of the special Act, the rent payable in respect of the lands comprised in such lease shall be apportioned between the lands so required and the residue of such lands; and such apportionment may be settled by agreement between the lessor and lessee of such lands on the one part, and the promoters of the undertaking on the other part, and if such apportionment be not so settled by agreement between the parties such apportionment shall be settled by two justices; and after such apportionment the lessee of such lands shall, as to all future accruing rent, be liable only to so much of the rent as shall be so apportioned in respect of the lands not required for the purposes of the special Act; and as to the lands not so required, and as against the lessee, the lessor shall have all

Sect. 119.

If part only of lands in same lease are required, rent to be apportioned by agreement between (1) lessor & lessee, & (2) promoters, or by justices; rights & liabilities in respect of rent apportioned to land not taken not to be affected.

Sect. 119. the same rights and remedies for the recovery of such portion of rent as previously to such apportionment he had for the recovery of the whole rent reserved by such lease; and all the covenants, conditions, and agreements of such lease, except as to the amount of rent to be paid, shall remain in force with regard to that part of the land which shall not be required for the purposes of the special Act, in the same manner as they would have done in case such part only of the land had been included in the lease.

Agreement for purchase from lessee only.

Where only the lessee agrees with the company, the company must proceed compulsorily against the lessor. The lessee cannot be called upon to obtain the lessor's consent to an apportionment (*Slipper v. Tottenham, &c. Ry. Co.*, 1867, 4 Eq. 112).

Where the agreement for purchase contains a stipulation for apportionment under this section, though in an action for specific performance the lessee is not entitled to an order that the company shall serve the lessor with notice to treat (which is necessary in order that a compulsory apportionment may be made), the Court will decree specific performance, and direct the lessee and the company to do all acts necessary to carry out the agreement (*Williams v. East London Ry. Co.*, 1869, 18 W. R. 159).

No apportionment by arbitrator.

An arbitrator may not apportion rent (*Re Ware & Regent's Canal Co.*, 1854, 9 Exch. 395; 7 Rail. Cas. 780; see *N. British Ry. Co. v. Renter*, 1864, 2 Sess. Cas. Third Series, 442).

From date of award only apportioned rent payable.

The apportioned rent only is payable to the landlord from the date of the final award, although no conveyance is executed to the company and no premises taken by them until after the accrual of rent for subsequent periods (*Bell v. Grares*, 1886, 18 L. R. Ir. 224, on the similar provision of sect. 6 of the Railways Act, Ireland, 1860 (23 & 24 Vict. c. 97); but see *Callow v. Flynn*, 1899, 26 L. R. Ir. 179).

Costs. S. 82.

Costs of apportionment under this section, unless provided for by the agreement, must be borne by the landowner, and do not come under sect. 82 (*Ex p. Buck*, 1863, 1 H. & M. 519). Though where the compensation is paid into Court, they can be directed to be paid by the company under sect. 80.

Compensation for Severance, &c.

CXX. Every such lessee as last aforesaid shall be entitled to receive from the promoters of the undertaking compensation for the damage done to him in his tenancy by reason of the severance of the lands required from those not required or otherwise by reason of the execution of the works.

Sect. 120.

Lessee, part of whose lands taken, to receive compensation for severance.

Compensation to Tenants at Will, and from Year to Year, &c., how determined.

CXXI. If any such lands shall be in the possession of any person having no greater interest therein than as tenant for a year or from year to year, and if such person be required to give up possession of any lands so occupied by him before the expiration of his term or interest therein, he shall be entitled to compensation for the value of his unexpired term or interest in such lands, and for any just allowance which ought to be made to him by an incoming tenant, and for any loss or injury he may sustain; or if a part only of such lands be required, compensation for the damage done to him in his tenancy by severing the lands held by him, or otherwise injuriously affecting the same; and the amount of such compensation shall be determined by two justices, in case the parties differ about the same; and upon payment or tender of the amount of such compensation all such persons shall respectively deliver up to the promoters of the undertaking, or to the person appointed by them to take possession thereof, any such lands in their possession required for the purposes of the special Act.

Sect. 121.

Yearly tenants and tenants for less interest, if required to give up possession before expiration of term, to be entitled to compensation for value of unexpired term, and for tenant right, & for any loss; or if part of lands are required, for damages for severance or otherwise injuriously affecting his lands; compensation to be settled by justices; on payment lessees to give up possession.

This section comes as a proviso upon the clauses which enact in general terms that compensation for *any* interest in land is to be assessed by a jury, and may, therefore, be

Relation of section to special Acts.

Sect. 121. treated as a proviso to and not inconsistent with the clauses in the special Acts, which enact in equally general terms that compensation for any interest in land is to be assessed by a jury. Consequently, compensation to a person having no greater interest than as tenant from year to year in premises required under the special Act can only be determined by justices (*Reg. v. Lord Mayor of London*, 1867, L. R. 2 Q. B. 292).

Object of section.

The object of this section is to prevent claims arising out of interests of short duration from being heard by any tribunal other than that of justices, the legislature thinking that claims of this kind, being from their nature for comparatively small amounts, need not go before either a jury or arbitrators, and that they might be satisfactorily and cheaply disposed of before justices (*Reg. v. G. N. Ry. Co.*, 1876, 2 Q. B. D. 151).

Exclusive occupation.

This section is incorporated in the Artizans' and Labourers' Dwellings Act, 1875 (*Wilkins v. Mayor of Birmingham*, 1883, 25 C. D. 78).

To raise a claim to compensation there must be an exclusive possession such as to constitute a tenancy. Hence compensation is not given for disturbance of a right for directors to use a board room for certain purposes at certain times, and for a clerk to use a desk in an office for certain purposes (*Municipal Land Co. v. Metrop. & Dist. Rys. Joint Committee*, 1883, C. & E. 184).

Tenancies exceeding a year.

A schoolmaster who was allowed a house, and was removable by two-thirds of the governors of the school on three months' notice, was held to come within this section (*Reg. v. M. S. & L. Ry. Co.*, 1854, 4 E. & B. 88).

The section applies only where the interest of the tenant does not exceed a yearly tenancy. A written agreement for a longer term which is void at law, but is in equity equivalent to a lease, will prevent a tenant from coming within the section (*Sweetman v. Met. Ry. Co.*, 1864, 1 H. & M. 543; cf. *R. v. East London Ry. Co.*, 1867, 17 L. T. 291). Where necessary the Court will direct a reference to ascertain the validity of an agreement for a lease (*Norfolk Ry. Co. v. Bayes*, 1849, 13 Jur. 435).

Tenancy

An agreement to let to a tenant for so long during an unexpired term of ten years as he shall continue to pay the rent, constitutes a tenancy for the remainder of the term (*Re King's Leasehold Estate*, 1873, 21 W. R. 881).

A tenant who is within this section cannot after notice

to treat obtain from his lessor a longer term (*Ex p. Edwards*, 1871, 12 Eq. 389). Sect. 121.

Questions sometimes arise as to the mode in which the length of the tenancy is to be reckoned, when a term which was originally greater than a year is reduced at the time when the company take possession to a residue of less than a year:— not to be increased after notice.
Reckoning of length of tenancy.

If, under a special Act, a company may require possession to be given up on six months' notice and on payment of compensation, and they give notice to treat to a tenant who at the date of the notice has more than a year of his term to run, and state their intention to take the land in six months, the tenant's interest is treated as exceeding a year, notwithstanding that at the end of the six months less than a year of the tenancy remains (*Tyson v. Mayor of London*, 1871, L. R. 7 C. P. 18).

If, however, nothing is done under a notice to treat given when the residue of the term exceeds a year, and subsequently, when the tenant's interest is less than a year, the company enter under sect. 85, the fact that notice to treat has been given is immaterial, and the justices have jurisdiction under this section to determine the amount of the compensation (*Reg. v. Kennedy*, 1893, 1 Q. B. 533).

Where there is no notice to treat, but a demand of possession under this section, the length of the term is reckoned for the purpose of the section from the date of the demand, and the compensation is assessed by justices if there is then less than a year to run (*Reg. v. G. N. Ry. Co.*, 1876, 2 Q. B. D. 151).

A notice to treat is not equivalent to requiring possession (*Reg. v. Stone*, 1866, L. R. 1 Q. B. 529).

The section applies only to cases where the tenant has been required to give up possession. In other cases he must proceed under sect. 68. Hence, a tenant who claims on the ground that his lands have been injuriously affected, but who has not been required to give up any part to the company, must proceed under sect. 68, notwithstanding that he is only a yearly tenant (*Reg. v. Sheriff of Middlesex*, 1862, 31 L. J. Q. B. 261); but if any of his lands are taken, he must proceed under this section (*Reg. v. M. S. & L. Ry. Co.*, 1854, 4 E. & B. 88; *Knapp v. L. C. & D. Ry. Co.*, 1863, 11 W. R. 890). Demand of possession.

If the land taken is held for less than a year, but the adjoining land, alleged to be injuriously affected is held Adjoining land held

Sect. 121. for longer than a year, the justices have no jurisdiction to decide upon a claim in respect of such longer term, though they can decide upon a claim for injuriously affecting limited to the shorter term. If any further claim is made the whole matter should be determined by an arbitrator or a jury under sect. 68. The claim cannot be split up by going under sect. 121 for part and reserving the remainder for proceedings under sect. 68 (*Berley Heath Ry. Co. v. North*, 1894, 2 Q. B. 579).

for longer
than a
year.

A. held land under a thirty years' lease determinable as to the whole or any part of the premises by the lessor by three months' notice. A company gave the lessee notice to treat for part of the land, and subsequently the lessor gave A. three months' notice to determine the tenancy as to that part. During the currency of the three months' notice the company took possession under sect. 85. A. claimed for the land taken and also for damage sustained during the residue of the thirty years' term in respect of the remaining land comprised in the lease. It was held that the metropolitan police magistrate had no jurisdiction to assess the latter compensation, which could only be assessed by arbitration or a jury under sect. 68; and that his jurisdiction under sect. 121 was confined to assessing compensation for the value of A.'s interest in the land taken and for damage sustained by him by severing or otherwise injuriously affecting the remainder of the land during the continuance of the term of three months for which the land taken was held (*S. C.*).

No com-
pensation
where
tenancy
duly deter-
mined.

Compensation is only payable to the tenant where possession is demanded before the expiration of his term. It is not payable accordingly where the notice to quit is duly given and the time under the notice is allowed to run, whether the notice is given by the landlord, or by the company after they have acquired the reversion (*Ex p. Merrett*, 1860, 2 L. T. 471).

Tenancy
deter-
mined by
landlord.

A tenant who remains in possession after the expiration of a due notice to quit given by the owner is not entitled to any part of the compensation money (*Ex p. Nadin*, 1848, 17 L. J. Ch. 421).

By com-
pany.

Where the company acquire the reversion on a tenancy and give due notice to quit, they may enter upon the expiration of the notice and pull down the buildings without paying any compensation to the tenant, and there is no need to give him any notice to treat under sect. 18 (*Syers v. Metrop. B. of Works*, 1877, 36 L. T. 277).

And so, if the lease reserves to the landlord power to resume possession on short notice, he may exercise the power and determine the tenant's interest, notwithstanding that he does so for the purpose of selling the land to a railway company buying under statutory powers (*Berley Heath Ry. Co. v. North*, 1894, 2 Q. B. 579). Sect. 121.
Power to resume possession.

But where the lease contained a power for the lessor to resume the land at any time for the purpose of building, accommodation, or otherwise, he was held not to be entitled to do so after notice to treat, and the lessee was entitled to compensation in respect of the whole lease (*Johnson v. Edgware, &c. Ry. Co.*, 1866, 14 W. R. 416; *cf. Doo v. London & Croydon Ry. Co.*, 1839, 1 Ry. Cas. 257).

And a power to resume possession is not exerciseable by the company after they have acquired the reversion:—

A tenant held a clay field under a lease which provided that the proprietor should be entitled "to reserve and except from the clay field any part of the lands at his pleasure." A railway company taking possession of the land under their statutory powers were not entitled to the benefit of this clause, and the tenant consequently could claim compensation (*Solway Junction Ry. Co. v. Jackson*, 1874, 1 Sess. Cas. (4th series) 831).

So, where a vendor of a building estate reserves to himself the power of altering the building plans, the compulsory taking of the estate is not equivalent, either in fact or law, to an exercise of this power (*Fleming v. Newport Ry. Co.*, 1883, 8 App. Cas. 265).

Where the notice to quit given by the company to the tenant would expire before the end of his year, but he was told that possession would not be required till the end of the year, and he remained in occupation accordingly, it was held upon a private Act that he was not entitled to compensation (*Reg. v. London & Southampton Ry. Co.*, 1839, 10 A. & E. 3). On the other hand, if the tenant receives a notice that possession will be required in six months—this not being a regular notice to quit—and then nothing further is done for over a year, the tenant all the time remaining in possession, the company cannot then demand immediate possession without payment of compensation. He is entitled to compensation, at the least, for the difference between his actual position after the expiration of the six months' notice—which is that of a mere tenant at sufferance—and the position of a tenant with a Six months' notice given, but possession not taken.

Sect. 121. right to retain possession till a fixed and definite period (*Cranicell v. Mayor of London*, 1870, L. R. 5 Ex. 284).

If such a six months' notice is afterwards abandoned by the company, the tenant is entitled to compensation for expenses incurred by reason of the notice (*Reg. v. JJ. of Lancashire*, 1856, 4 W. R. 643).

Time for summons not limited to six months.

A summons under this section is not a complaint upon which the justices have authority to make an order for payment of money under the Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43, s. 1), and therefore the time within which it may be heard is not limited by sect. 11 of that Act to six months from the date of the notice to treat (*Reg. v. Hannay*, 1874, 23 W. R. 164; *supra*, p. 110).

Finding of justices not necessarily in writing.

The determination is not an order which requires to be in writing under the above Act, and it is not essential that the justices should give it in writing (*Re Boyce Combe & L. C. & D. Ry. Co.*, 1863, 11 W. R. 441).

Arrears of rent.

Where a fund representing compensation to a tenant is lodged in Court, the landlord has no lien on it for arrears of rent (*Ex p. Carey : Re Gt. S. & W. Ry. Co.*, 1847, 10 L. T. O. S. 37); unless he had at the time of taking a right of re-entry. In that case he is an incumbrancer on the leasehold interest, and is entitled to appear upon an application for dealing with the money (*Re London Street, Greenwich*, 1887, 57 L. T. 673; see *Re Kilworth Rifle Range*, 1899, 2 Ir. 305, where the question of the landlord's lien on the fund was raised, but not decided).

Apportionment of rent.

It was held in *Wainwright v. Ramsden* (1839, 5 M. & W. 602) that a tenant giving up possession between two rent days, might nevertheless be liable for rent accruing at the next rent day, but such a claim against the tenant would not now be upheld (see the Apportionment Act, 1870).

Costs.

It seems that the compensation may be fixed so as to include the costs of the application to the justices (cf. *Mayor of Huddersfield v. Shaw*, 1890, 54 J. P. 724).

Production of Lease, where greater Interest claimed than Tenancy from Year to Year, &c.

Sect. 122.

Where tenant claims an interest greater than

CXXII. If any party, having a greater interest than as tenant at will, claim compensation in respect of any unexpired term or interest under any lease or grant of any such lands, the promo-

ters of the undertaking may require such party to produce the lease or grant in respect of which such claim shall be made, or the best evidence thereof in his power; and if, after demand made in writing by the promoters of the undertaking, such lease or grant, or such best evidence thereof, be not produced within twenty-one days, the party so claiming compensation shall be considered as a tenant holding only from year to year, and be entitled to compensation accordingly.

Sect. 122.

tenancy at will, he must produce lease or evidence of lease; otherwise he will be treated as yearly tenant.

TIME FOR EXERCISE OF COMPULSORY POWERS.

Sect. 123.

Compulsory powers not to be exercised after prescribed period, or, if no period prescribed, after three years from special Act.

CXXIII. And be it enacted, that the powers of the promoters of the undertaking for the compulsory purchase or taking of lands for the purposes of the special Act shall not be exercised after the expiration of the prescribed period, and if no period be prescribed not after the expiration of three years from the passing of the special Act.

“Special Act.”

Although under sect. 2 (2) of the Military Lands Act, 1892 (55 & 56 Vict. c. 43), that Act is defined to be the “special Act,” yet for the purposes of this section the special Act must be taken to be the Act of 1892 together with the subsequent Act confirming a provisional order under the Act of 1892 relating to the lands in question (*Hill v. Haire*, 1899, 1 Ir. 87).

Application of section.

At first sight there is a difficulty in this section because it refers to compulsory “powers,” whereas promoters have but one compulsory power, namely, the power to give notice to take lands; the other powers are only ancillary to carrying out the purchase. But the powers referred to are powers given to the several promoters of the several special Acts with which this Act may be incorporated, and not several powers given to the promoters of each special Act. And the section refers to the powers given by the Act for the purchase and taking of land, and not to those given for carrying into effect purchases already made (*Sparrow v. Oxford, &c. Ry. Co.*, 1851, 9 Hare, 436).

Where limit prescribed for some purposes only.

On the construction of an extension Act of a railway company authorizing the acquisition of land for various purposes, it was held that no limit was fixed for the exercise of the compulsory powers of taking land for one of the purposes specified. Hence the limit was three years under

this section (*Seymour v. L. & S. W. Ry. Co.*, 1859, 33 L. T. O. S. 280). Sect. 123.

Service of notice to treat is a sufficient exercise of the compulsory power, and, consequently, if the notice be given before the expiration of the three years, the company may after that time enter upon the land under sect. 85. The power of entry is not itself one of the powers of compulsory purchase, but a power incidental to the completion of the purchase (*Marquis of Salisbury v. G. N. Ry. Co.*, 1852, 17 Q. B. 840, 853; *Tiverton, &c. Ry. Co. v. Loosemore*, 1884, 9 App. Cas. p. 488). And *a fortiori*, if notice to treat has been served and entry made under sect. 85 before the time has expired, the company may remain in possession and proceed with the purchase subsequently (*Worsley v. South Devon Ry. Co.*, 1851, 16 Q. B. 539; *Doe v. N. Staff. Ry. Co.*, 1851, 16 Q. B. 526; *Sparrow v. Oxford, &c. Ry. Co.*, 1851, 9 Hare, 436, 445).

Service of notice to treat is sufficient exercise of compulsory power.

So where notice is given before the compulsory powers have expired, and a counter notice after they have expired, the company may proceed with the purchase of the whole premises (*Pinchin v. London & Blackwall Ry. Co.*, 1854, 5 D. M. & G. 851).

And where the notice to treat has been given within the three years, the landowner may require the company after that time to proceed to have the price ascertained by a jury (*Reg. v. Birmingham, &c. Ry. Co.*, 1850, 15 Q. B. 634; *Brocklebank v. Whitehaven Junction Ry. Co.*, 1847, 15 Sim. 632, is overruled). Purchase proceeded with at suit of landowner.

Where an agreement for the sale of land to a railway company empowers the company to take additional land at a fixed price per acre, the additional land can be taken at any time before the period limited for completion of the works, although the compulsory powers have expired (*Rangeley v. M. R. Co.*, 1868, 3 Ch. 306; *Kemp v. S. E. Ry. Co.*, 1872, 7 Ch. 364). Taking additional land.

Where a company, whose compulsory powers under their Act are to be exercised within a prescribed period, serve a notice to treat on a landowner, they must, in order to exercise their powers, come to an agreement with the landowner, or ascertain the price to be paid to him, within reasonable time, that is, within the period fixed by the Act (or by an extending Act: *Bentley v. Rotherham Local Board*, 1876, 4 C. D. 588) for the completion of the line. And when that period has expired without any step being Expiry of limit for completion of works.

Sect. 123. taken beyond the service of the notice and of the claim by the landowner, the powers of the company to take the land under the notice cease to be operative (*Richmond v. N. London Ry. Co.*, 1864, 5 Eq. 353; see 3 Ch. 679; see also *Kemp v. S. E. Ry. Co.*, 1876, 7 Ch. p. 372; *Ystalyfera Iron Co. v. Neath & Brecon Ry. Co.*, 1873, 17 Eq. p. 148); and under these circumstances, if the company have obtained a new Act, empowering them to take the land comprised in the notice, they must give a fresh notice under the new Act (*Richmond v. N. London Ry. Co.*, 3 Ch. 679).

Comple-
tion of
purchase
after ex-
piry of
limit for
comple-
tion of
works.

But though the purchase money has not been determined within the period for completion of the works, yet if the company have taken steps under the notice which affect the position of the parties, they are entitled and are compellable to complete the purchase after the expiry of that period. Thus where the company gave notice to treat within the three years, and entered under sect. 85 only thirteen days before the expiration of the five years limited for the completion of the line, it was held that they were entitled to remain and complete the railway after the five years (*Tiverton & N. Devon Ry. Co. v. Loosemore*, 1884, 9 App. Cas. 480).

Right to
retain
lands
already
acquired.

The fact that a railway company have by lapse of time lost the powers which the legislature has given them to take lands does not deprive them of the right to hold lands which they acquired during the existence of those powers, nor does it release them from the obligations contracted with reference to such lands (*Webb v. Direct London & Portsmouth Ry. Co.*, 1851, 9 Hare, 129).

Rys. C. A.
1845, s. 16.

The latter part of sect. 16 of the Rys. C. A. 1845, enabling a railway from time to time to alter, &c. certain works, is not subject to a restriction in the special Act as to the time for completion of the railway (*Emsley v. N. E. Ry. Co.*, 1896, 1 Ch. 418).

INTERESTS IN LANDS BY MISTAKE OMITTED TO BE PURCHASED.

And with respect to interests in lands which have by mistake been omitted to be purchased, be it enacted as follows:—

§ 124. Power to take by Agreement or Compulsorily.

§ 125. Principle upon which Compensation determined.

§ 126. Costs.

Power to take by Agreement or Compulsorily.

CXXIV. If at any time after the promoters of the undertaking shall have entered upon any lands which under the provisions of this or the special Act, or any Act incorporated therewith, they were authorized to purchase, and which shall be permanently required for the purposes of the special Act, any party shall appear to be entitled to any estate, right, or interest in or charge affecting such lands which the promoters of the undertaking shall through mistake or inadvertence have failed or omitted duly to purchase or to pay compensation for, then, whether the period allowed for the purchase of lands shall have expired or not, the promoters of the undertaking shall remain in the undisturbed possession of such lands, provided within six months after notice of such estate, right, interest, or charge, in case the same shall not be disputed by the promoters of the undertaking, or in case the same shall be disputed then within

Sect. 124.

If after entry any party appears to be entitled to interest which promoters have through mistake or inadvertence omitted to purchase, promoters are to remain in possession, provided within six months of establishment of title they pay compensation for land and mesne profits; to be determined as though purchase had preceded entry.

Sect. 124. six months after the right thereto shall have been finally established by law in favour of the party claiming the same, the promoters of the undertaking shall purchase or pay compensation for the same, and shall also pay to such party, or to any other party who may establish a right thereto, full compensation for the mesne profits or interest which would have accrued to such parties respectively in respect thereof during the interval between the entry of the promoters of the undertaking thereon and the time of the payment of such purchase money or compensation by the promoters of the undertaking, so far as such mesne profits or interest may be recoverable in law or equity; and such purchase money or compensation shall be agreed on or awarded and paid in like manner as, according to the provisions of this Act, the same respectively would have been agreed on or awarded and paid in case the promoters of the undertaking had purchased such estate, right, interest, or charge before their entering upon such land, or as near thereto as circumstances will admit.

Applica-
tion of
section.

This section applies only to cases of mistake or inadvertence, where the company have treated with an apparent owner of land, and it turns out that someone else has an interest. It does not apply where the company have not purchased the land in dispute (*Thomas v. Barry Dock, &c. Co.*, 1889, 5 T. L. R. 360).

Mistake
or inad-
vertence.

Where a company take a conveyance of a piece of land, the conveyance stating that a small portion belongs to a third party, who neither knows its position or extent, and he claims it several years afterwards, this section does not apply. There is no mistake or inadvertence within the meaning of the section (*Stretton v. G. W. & Brentford Ry. Co.*, 1870, 5 Ch. 751). And the section does not apply where mortgagees are known to the company, but, in consequence of their not being parties to the inquiry as to value, are not bound by the result of the inquiry (*Martin v. L. C. & D. Ry. Co.*, 1866, 1 Ch. 501).

Where there is a dispute as to the admeasurement of the vendor's land, and the company, acting on an incorrect measurement, take land of the vendor's without paying for it and the vendor succeeds against them in ejectment, the time for the exercise of the compulsory powers having then elapsed, there is a failure to purchase the lands in proper time through mistake or inadvertence, and this section applies; and the six months within which proceedings to determine the compensation are to be taken run from the final disposal of the proceedings in ejectment (*Hyde v. Mayor of Manchester*, 1852, 5 De G. & Sm. 249).

Sect. 124.
Mistake in measurements.

The true effect of sect. 124—at least where the title is disputed (see *Jolly v. Wimbledon, &c. Ry. Co.*, *infra*)—is not to prevent a claimant from bringing ejectment to establish his title, but merely to authorize the Court to stay execution on the judgment when obtained (*Marquis of Salisbury v. G. N. Ry. Co.*, 1858, 5 C. B. N. S. 174).

Section does not bar ejectment.

A company entered upon lands of which the mortgagor had been in possession, and although the purchase money was not paid to him, the parties were treating for an arrangement, and the entry was with the consent of the mortgagor. The mortgage was not known to the company until the mortgagee's attorney, thirteen months later, sent a letter to the company asserting the mortgagee's rights. A correspondence ensued, in which the mortgagee gave no particulars of his title. The company did not dispute his title, but asked for delay, as their legal advisers were absent from London. Two months later the mortgagee brought ejectment, which was refused on the ground that, the title not being in dispute, the company, under this section, had a right of possession for six months after notice of the mortgagee's claim (*Jolly v. Wimbledon, &c. Ry. Co.*, 1861, 1 B. & S. 807).

Unless title not disputed.

Principle on which Compensation determined.

CXXV. In estimating the compensation to be given for any such last-mentioned lands, or any estate or interest in the same, or for any mesne profits thereof, the jury, or arbitrators, or justices, as the case may be, shall assess the same according to what they shall find to have been the value of

Sect. 125.
Compensation to be assessed as at time of entry.

Sect. 125. such lands, estate or interest, and profits, at the time such lands were entered upon by the promoters of the undertaking, and without regard to any improvements or works made in the said lands by the promoters of the undertaking, and as though the works had not been constructed.

Costs.

Sect. 126.

Where promoters fail in disputing claim, costs to be paid by them before omitted interest is got in.

CXXVI. In addition to the said purchase money, compensation, or satisfaction, and before the promoters of the undertaking shall become absolutely entitled to any such estate, interest, or charge, or to have the same merged or extinguished for their benefit, they shall, when the right to any such estate, interest, or charge shall have been disputed by the company, and determined in favour of the party claiming the same, pay the full costs and expenses of any proceedings at law or in equity for the determination or recovery of the same to the parties with whom any such litigation in respect thereof shall have taken place; and such costs and expenses shall, in case the same shall be disputed, be settled by the proper officer of the Court in which such litigation took place.

“Full costs and expenses.”

“Full costs and expenses” here mean costs as between solicitor and client (*Doe v. Mayor, &c. of Manchester*, 1852, 12 C. B. 474).

SUPERFLUOUS LANDS.

And with respect to lands acquired by the promoters of the undertaking under the provisions of this or the special Act, or any Act incorporated therewith, but which shall not be required for the purposes thereof, be it enacted as follows :—

§ 127. To be sold or to vest in adjoining Owners.

§ 128. To be offered first to Owner from whom they were originally taken.

§ 129. Time within which Offer to be accepted.

§ 130. Price to be settled by Agreement or Arbitration.

§ 131. Conveyance.

§ 132. Effect of Word “Grant” in Conveyances from the Company.

To be sold or to vest in adjoining Owners.

CXXVII. Within the prescribed period, or if no period be prescribed within ten years after the expiration of the time limited by the special Act for the completion of the works, the promoters of the undertaking shall absolutely sell and dispose of all such superfluous lands, and apply the purchase money arising from such sales to the purposes of the special Act; and in default thereof all such superfluous lands remaining unsold at the expiration of such period shall thereupon vest in and become the property of the owners of the lands adjoining thereto, in proportion to the extent of their lands respectively adjoining the same.

sect. 127.

Within prescribed period, or within ten years from limit for completion of works, superfluous lands to be absolutely sold: in default to vest in adjoining owners.

Compare sect. 175 of the Public Health Act, 1875, as to sale of lands not required by a local authority; and as to the interim user of such lands, see *Att.-Gen. v. Teddington Dist. Council* (1898, 1 Ch. 66). The lands, though authorized by the Local Government Board to be retained, cannot be permanently used for purposes other than those

Sect. 127. for which they were originally acquired (*Att.-Gen. v. Hamwell Dist. Council*, 1900, 2 Ch. 377).

Section not restricted to lands acquired compulsorily.

This and the following sections are not restricted to cases where land has been acquired by a company under what are called its compulsory powers. The object of the section is as applicable to lands acquired by negotiation, where the special Act confers a power so to take them, as to lands which are not so acquired (*Hooper v. Bourne*, 1877, 3 Q. B. D. p. 273, per Bramwell, L. J.; but see *Horne v. Lymington Ry. Co.*, 1874, 31 L. T. 167). But they do not apply to lands taken for extraordinary purposes under sect. 12 (*supra*, p. 84).

Applies to reversion.

The rule in this section extends to lands of which the company have acquired the reversion subject to a term (*Moody v. Corbett*, 1866, L. R. 1 Q. B. 510).

To lands under Metrop. Dist. Ry. Act.

Lands within sect. 15 of the Metrop. Dist. Ry. Act, 1868, under which certain powers of holding and letting land are conferred, are within this section, and can be sold as superfluous land, though, apparently, they are not within sect. 128 (*Tomlin v. Budd*, 1874, 22 W. R. 529).

Not in case of abandonment.

The section does not apply where the railway is abandoned (*Smith v. Smith*, 1868, L. R. 3 Ex. 282).

The abandonment by a railway company of their undertaking does not, independently of statute, give the previous owner a right to a reconveyance (*Astley v. M. S. & L. Ry. Co.*, 1858, 2 De G. & J. 453).

Lands were compulsorily taken for a railway in 1863. The railway was to be complete in 1869, but it was not finished till 1875, when it was found to be defective and was abandoned. There was evidence that the public, including the occupiers of the land through which the line ran, passed over it as they wished, and a tenant of the owner was in the habit of carting material over the line. It was held (1) that the lands had not become superfluous within sect. 127; and (2) that neither the original owner nor the occupiers had acquired a title under the Statute of Limitations (*Re Duffy's Estate*, 1897, 1 Ir. R. 307).

1. When land is superfluous.

Test whether lands are superfluous.

The following authorities show when lands are to be considered "superfluous" within the meaning of this section:—

The cases of *G. W. Ry. Co. v. May*, *Hooper v. Bourne*,

and *Betts v. G. E. Ry. Co.* (*infra*), have now settled Sect. 127.
beyond all controversy what the nature of superfluous land is, and what land ought, under ordinary circumstances, to be considered superfluous land. The test is whether or not there is *bonâ fide* reason to believe that within no very distant time, or within a reasonable time, having regard to the nature of the undertaking, the land acquired by the company will be required for the purposes of the undertaking (*Hobbs v. Mid. Ry. Co.*, 1882, 20 C. D. p. 431, per Manisty, J.).

Land which is taken compulsorily by a railway company for the purposes of their Act and is *bonâ fide* required by them with reasonable expectation of using it for such purposes, does not become "superfluous," and vest at the end of ten years, merely because from insufficiency of traffic or from want of funds the company cannot immediately apply it to the purposes of the Act, although it is in the meanwhile let out to yearly tenants and applied to purposes for which it is in its then condition suitable (*Betts v. G. E. Ry. Co.*, 1878, 3 Ex. D. 182; affirmed in H. L.; W. N. 1879, p. 163). And when a piece of land taken as a whole is wanted for the purposes of a railway, discussion will not be allowed as to whether a portion is superfluous. A Court of justice must consider whether the land is substantially wanted; if it is, the company are entitled to retain the whole (*S. C.*, 3 Ex. D. p. 187).

Land may become "superfluous land" in one of four different ways:—(1) It may be land originally taken under the compulsory powers, but taken upon a wrong estimate or calculation of the quantity of land which would be required for a purpose for which it is afterwards found out, by experience, that less land than was originally supposed will be sufficient; (2) it may be land which under sect. 92 the company has been forced to take though wishing to take a part only of the premises; (3) it may be land originally taken and required for permanent works, which works are subsequently abandoned; or (4) land taken for temporary purposes which have come to an end (per Lord Cairns, L. C., in *G. W. Ry. Co. v. May*, 1874, L. R. 7 H. L. p. 293).

Where land was taken by the railway company for the temporary purpose of depositing spoil upon it, and at the end of the ten years it had ceased to be used for this purpose, and it was not shown that there were any further

Sect. 127. purposes of the undertaking for which it was afterwards intended to be used, it was held to be superfluous land within this section (*G. W. Ry. Co. v. May*, 1874, L. R. 7 H. L. 283). If the case had disclosed any facts showing that there were purposes remaining unsatisfied, the retention of the land, it has been said, would have been considered justifiable (per Mellor, J., in *Hooper v. Bourne*, 1877, 2 Q. B. D. p. 344). And in the case just referred to, Manisty, J., observed (p. 346):—"The *ratio decidendi* in *May's Case* was that the land in question had been acquired by the railway company for a temporary purpose only, which purpose had been fulfilled within the time prescribed for the sale of superfluous lands, and that neither at the expiration of that time nor at any time had the land been required for any other purpose in connection with the railway."

A railway company purchased lands, nineteen acres in extent, under which were mines of iron ore. The mines were specifically conveyed to the company. The time for completing the railway was in 1853. The company used six acres of the land for their works, but by 1863—the date when it had to be ascertained whether any lands were superfluous—the remainder was still unused. They let such remainder from time to time on yearly tenancies, in each case reserving the right to re-enter. In 1875 an adjoining owner brought ejectment on the ground that the lands were superfluous and had vested in him. It appeared that since 1868 the traffic had much increased and that the land would be required for sidings, though the sidings had not in fact been constructed. It was held that the lands were not superfluous in 1863. Inasmuch as the subsequent development of traffic was of a normal character, it was a reasonable inference that it was foreseen in 1863, and this inference was assisted by the fact that the railway was near a populous town, and that in the ordinary course further accommodation would be required. It was also held that it lay upon the plaintiff to prove affirmatively the facts which showed the land to be superfluous; and it was suggested by Lord Cairns, L. C., but not decided, that the mines were not severable from the surface and did not vest as superfluous land in the adjoining owner while the surface remained vested in the company (*Hooper v. Bourne*, 1880, 5 App. Cas. 1; cf. *Re Metrop. Dist. Ry. Co. & Cosh*, 1880, 13 C. D. 607, where

it was held that "superfluous land" must be land separated by a vertical, not by a horizontal, boundary from land required for the purposes of the company). Sect. 127.

"There is no doubt that the company can, before the expiration of the statutory period, determine that the land is superfluous and sell it, and it is equally clear that if, at the end of the statutory period, they think that the land is required for the purpose of their railway, it is not then superfluous. When I say 'they think,' I mean if their proper advisers have fairly and reasonably come to that conclusion, that is sufficient" (per Jessel, M. R., in *L. & S. W. Ry. Co. v. Gomm*, 1882, 20 C. D. p. 584). Opinion of company's advisers.

If persons of competent skill can *bonâ fide* say that although the land is not at the moment wanted for the railway, and although it is not possible to fix a time when it will be wanted, yet at some future time, perhaps five or six years, it assuredly will be wanted, in that case land is required for the purposes of the undertaking (*Hooper v. Bourne*, 1877, 3 Q. B. D. p. 275).

Land does not vest in the adjoining owners as superfluous land at the end of ten years if it is then reasonable to suppose that it will be required for the railway, especially if, when the question is raised, it is in fact required (*N. British Ry. Co. v. Moon's Trustees*, 1879, 6 Sess. Cas. 4th series, 640). Land in fact subsequently required.

Where a railway station is built upon arches, the part of the land under the arches is not superfluous land, and a right of way cannot be granted over it (*Mulliner v. Mid. Ry. Co.*, 1879, 11 C. D. 611). Land under arches not superfluous.

Where a cutting was made and covered in with arches, and the surface over the arches restored, such surface was not superfluous land (*Re Metrop. Dist. Ry. Co. & Cosh*, 1880, 13 C. D. 607); *contra* as to a strip of land beyond the railway boundary wall, between the wall and a vertical line drawn from the footings of the wall beneath the surface (*Ware v. L. B. & S. C. Ry. Co.*, 1883, 31 W. R. 228). Or over tunnel.

A company by negotiating within the ten years for the sale of land are not estopped from alleging at the end of that time that the lands are required for the purpose of the undertaking. Whether the lands are superfluous is a mixed question of law and fact (*Macfie v. Callander & Oban Ry. Co.*, 1898, A. C. 270; and see *infra*, pp. 337, 338). Negotiating for sale is not conclusive that lands are superfluous.

A small area of land used for garden ground by a Lands

Sect. 127. station-master and porters, upon part of which also there was a coal shed used by a customer of the railway for storing coal prior to distribution, falls within the term “necessary and convenient for traffic” in an agreement under which lands which could not be so described at the end of a specified period were to be re-conveyed (*Harris v. L. & S. W. Ry. Co.*, 1889, 60 L. T. 392).

“necessary and convenient.”

2. Vesting of land in adjoining owners.

The last day of the ten years is the critical time.

For the purposes of this section, the point of time to be considered is the last day of the ten years, and if land is not then required by the company it is superfluous; but it is not superfluous if it is then required, although at a subsequent time it may not be required, for the purposes of the undertaking (*G. W. Ry. Co. v. May*, 1874, L. R. 7 H. L. p. 294).

Unexpected use.

Land will vest in adjoining owners at the end of the limited period, although at some subsequent time a new railway is unexpectedly constructed, forming a junction with the old railway, which would have rendered the retention of the land by the old company desirable for the purposes of their undertaking; for if this were allowed to be done there would be a difficulty in saying that any piece of land would not at some future time be required (*Hooper v. Bourne*, 1877, 3 Q. B. D. p. 276, per Bramwell, L. J.).

Right not divested by Act extending time subsequently to vesting.

When, subsequently to the vesting of the right to the superfluous land, an Act is passed extending the time limited for the sale by the former Act, such right will not be divested (*Moody v. Corbett*, 1866, L. R. 1 Q. B. 510).

Mode of division of land.

As to the mode of dividing the land between adjoining owners when it vests in them, see *Moody v. Corbett* (*supra*), and *Smith v. Smith* (1868, L. R. 3 Ex. 282).

Renewal of tenancy under company after vesting in adjoining owner.

If after land has vested in the adjoining owner under sect. 127, the company's tenant renews his tenancy under the company, he is estopped from disputing their title (*L. & N. W. Ry. Co. v. West*, 1867, 36 L. J. C. P. 245).

Ejectment by adjoining owner.

In an action by an adjoining owner to recover superfluous land, particulars of sale prepared by the company's solicitor are not evidence against the company in the absence of proof of his authority to prepare them (*Moody v. L. B. & S. C. Ry. Co.*, 1861, 9 W. R. 780).

3. Sale of superfluous lands.**Sect. 127.**

A sale of superfluous land under sect. 127 must be absolute, and it is *ultra vires* for the company to reserve any interest, such as a right of repurchase at a future date, notwithstanding they have power to purchase by agreement (*L. & S. W. Ry. Co. v. Gomm*, 1882, 20 C. D. 562).

Sale must be absolute.

A railway company selling their superfluous land are at liberty to impose such restrictive conditions upon the user and enjoyment of the land as may most conduce to their advantage as vendors. The L. C. A. does not deprive them in this respect of the rights of ordinary vendors (*Re Higgins & Hitchman's Contract*, 1882, 21 C. D. 95).

But restrictive conditions may be imposed.

It is doubtful whether on a sale of superfluous land the company can reserve a lien for unpaid purchase money, and a title depending on a conveyance subject to such a lien will not be forced on a purchaser (*Re Thackwray & Young's Contract*, 1888, 40 C. D. 34).

Lien for unpaid purchase money.

Where a railway company sell superfluous land subject to a covenant on the part of the purchaser to re-sell a certain defined portion when required, the sale is bad as to such portion, but is valid as to the remainder of the land (*Ray v. Walker*, 1892, 2 Q. B. 88).

Sale absolute as to part of land is valid as to that part.

Superfluous land was sold by a railway company to a stranger without the prior owners waiving their right of pre-emption. A condition of sale which required a subsequent purchaser to admit that all had been done to enable the company to sell the land as superfluous land was held to be binding (*Best v. Hamand*, 1879, 12 C. D. 1).

Rights and liabilities of purchasers of superfluous land.

Where under sects 77, 78, and 79 of the Ry. C. A. 1845, a company, acting under their compulsory powers, purchase the surface only, the owner or lessee of the mines has a right to work the same without regard to whether such working will let down the surface, provided the working is according to the usual manner of working in the district; and he has this right as against a person who has purchased the surface from the railway company as superfluous land (*Pountney v. Clayton*, 1883, 11 Q. B. D. 820).

Under an Inclosure Act certain land was subject to a prohibition against building. The land was taken by a railway company and part of it sold as superfluous land. It was held that the prohibition against building revived upon the sale (*Bird v. Eggleton*, 1885, 29 C. D. 1012).

Revival of previous restrictive condition.

To be offered first to Owner from whom they were originally taken.

Sect. 128.

Superfluous lands, unless in a town or building lands, are to be offered to owners of lands from which same were severed, and then to adjoining owners.

CXXVIII. Before the promoters of the undertaking dispose of any such superfluous lands they shall, unless such lands be situate within a town, or be lands built upon or used for building purposes, first offer to sell the same to the person then entitled to the lands (if any) from which the same were originally severed; or if such person refuse to purchase the same, or cannot after diligent inquiry be found, then the like offer shall be made to the person or to the several persons whose lands shall immediately adjoin the lands so proposed to be sold, such persons being capable of entering into a contract for the purchase of such lands; and where more than one such person shall be entitled to such right of pre-emption such offer shall be made to such persons in succession, one after another, in such order as the promoters of the undertaking shall think fit.

As to what are superfluous lands, see cases under sect. 127.

Application of land to a new purpose is not a "disposal."

A railway company bought land under compulsory powers, and suffered the time for completion to elapse without constructing the railway. They then obtained power to construct another railway, and proceeded to use the land for this second project. It was held that the previous owner's right of repurchase had not arisen, for the words "dispose of" in sect. 128 refer to a transfer of land to some other person, not to its application to a new purpose (*Astley v. M. S. & L. Ry. Co.*, 1858, 2 De G. & J. 453).

Exclusion of lands in town.
Meaning of word "town."

The word "town" here means a space on which the dwelling-houses are collected so near to each other that they may be said to be continuous, and an open space occupied as a mere accessory to the convenience of the dwelling-houses would probably be considered as in a "town" (*Elliot v. South Devon Ry. Co.*, 5 Ry. Cas. 500; and see *R. v. Cottle*, 1851, 16 Q. B. 412).

Lands situated near a railway station and not continuously built upon are not within a "town," or used for building purposes, within the meaning of this section. Nor are lands which a company have acquired, but not used, for the purposes of their undertaking, merely through being capable of being afterwards used for building purposes (*L. & S. W. Ry. Co. v. Blackmore*, 1870, L. R. 4 H. L. 610). Sect. 128.

To come within the above term the land must be sold as building land, or let on building leases, and actually laid out for building. The land must be either built upon, or actually laid out to be used for building purposes (*Coventry v. L. B. & S. C. Ry. Co.*, 1867, 5 Eq. 104). Building land.

The words "built upon" must be intended to describe something which, though it cannot be called land in a town or part of a town, is land covered with continuous buildings *eodem modo* as the *solum* of a town (*Carington v. Wycombe Ry. Co.*, 1868, 3 Ch. p. 384).

Superfluous land must under sect. 128 of the statute be first offered to persons whose lands, or some of them, have been taken in virtue of the company's Act, or who are "owners of the land adjoining" (*L. & S. W. Ry. Co. v. Blackmore*, 1870, L. R. 4 H. L. 610). To whom to be first offered.

An adjoining owner, though not previously interested in the land, has a right to make a claim, and an inquiry may be directed whether any other person has a better right (*S. C.*).

A lessee is an "adjoining owner" (*Coventry v. L. B. & S. C. Ry. Co.*, 1867, 5 Eq. 104).

An adjoining owner is entitled to the benefit of this section, notwithstanding the interposition of a private road of which he has the exclusive use (*S. C.*).

Where a wall has been built between the company's land and that of an adjoining owner, and it is agreed that the land on which it is built shall belong to both, the landowner and not the company is the adjoining owner under this section (*L. & S. W. Ry. Co. v. Blackmore, supra*). Wall belonging to both parties.

Where under a special Act a right of pre-emption was given to the persons from whom the lands had been purchased, this was limited to the actual vendors to the company and could not be claimed by their successors in title (*Highgate Archway Co. v. Jeakes*, 1871, 12 Eq. 9). Pre-emption limited under special Act to vendors.

The right of pre-emption arises within the ten years, if the company treat the land as superfluous; as where they Right of pre-

Sect. 128. permanently devote it to a purpose not within their Act, such as the making of a road not required for the purposes of or incidental to the railway (*Lord Beauchamp v. G. W. Ry. Co.*, 1868, 3 Ch. 745); or sell it under particulars in which it is described as "surplus land" (*L. & S. W. Ry. Co. v. Blackmore, supra*); though the mere fact of a railway company purporting to convey away land is not conclusive to show that the land is superfluous, and upon such a conveyance within the ten years the former owner's right of pre-emption does not arise. But the conveyance, if *ultra vires*, and if it is shown that the land is required for the purposes of the company, will be set aside (*Hobbs v. Mid. Ry. Co.* 1882, 20 C. D. 418; cf. *Carrington v. Wycombe Ry. Co.*, 1868, 3 Ch. 377).

emption
before
lapse of
ten years.

Compul-
sory sale
to another
company.

Where, within the period limited for the sale by company A. of their superfluous lands, land of the company is compulsorily purchased by company B., this does not raise an inference that the land is superfluous land so as to give to the previous owner an immediate right of pre-emption under sect. 128 (*Dunhill v. N. E. Ry. Co.*, 1896, 1 Ch. 121).

Offer after
contract
with
stranger.

An offer made to the adjoining owner, and declined by him, complies with the statute, though made after a contract for sale to a third person. (*London & Greenwich Ry. Co. v. Goodchild*, 1844, 3 Ry. Cas. 507.)

Time within which Offer to be accepted.

Sect. 129. CXXIX. If any such persons be desirous of purchasing such lands, then within six weeks after such offer of sale they shall signify their desire in that behalf to the promoters of the undertaking; or if they decline such offer, or if for six weeks they neglect to signify their desire to purchase such lands, the right of pre-emption of every such person so declining or neglecting in respect of the lands included in such offer shall cease; and a declaration in writing made before a justice by some person not interested in the matter in question, stating that such offer was made, and was refused, or not accepted within six weeks from the time of making the same, or that the person or all the persons entitled to the right

Offer must
be ac-
cepted
within
six weeks.

of pre-emption were out of the country, or could not after diligent inquiry be found, or were not capable of entering into a contract for the purchase of such lands, shall in all Courts be sufficient evidence of the facts therein stated. Sect. 129.

Price to be Settled by Agreement or Arbitration.

CXXX. If any person entitled to such pre-emption be desirous of purchasing any such lands, and such person and the promoters of the undertaking do not agree as to the price thereof, then such price shall be ascertained by arbitration, and the costs of such arbitration shall be in the discretion of the arbitrators. Sect. 130.

The arbitration clauses of the Act do not apply to arbitrations under this section, and the company will not be compelled by mandamus to take up the award (*Jones v. S. Staff. Ry. Co.*, 1869, 19 L. T. 603). Taking up award.

Where the price of superfluous lands in respect of which a landowner exercises his right of pre-emption is determined by arbitration, the question of costs is to be decided in the same way as if the landowner had bought the land of another company; consequently each party must pay his own costs (*Re Eyre's Trusts*, W. N. 1869, p. 76). Costs.

Conveyance.

CXXXI. Upon payment or tender to the promoters of the undertaking of the purchase money so agreed upon or determined as aforesaid they shall convey such lands to the purchasers thereof, by deed under the common seal of the promoters of the undertaking, if they be a corporation, or if not a corporation under the hands and seals of the promoters of the undertaking, or any two of the directors or managers thereof acting by the authority of the body; and a deed so executed shall be effectual to vest the lands comprised therein in the purchaser of such lands for the estate which shall so have been purchased by him; Sect. 131.

On payment of purchase money promoters to convey to purchaser.

Sect. 131. and a receipt under such common seal, or under the hands of two of the directors or managers of the undertaking, as aforesaid, shall be a sufficient discharge to the purchaser of any such lands for the purchase money in such receipt expressed to be received.

Effect of Word "Grant" in Conveyances from the Company.

Sect. 132. CXXXII. In every conveyance of lands to be made by the promoters of the undertaking under this or the special Act the word "grant" shall operate as express covenants by the promoters of the undertaking, for themselves and their successors, or for themselves, their heirs, executors, administrators, and assigns as the case may be, with the respective grantees therein named, and the successors, heirs, executors, administrators, and assigns of such grantees according to the quality or nature of such grants, and of the estate or interest therein expressed to be thereby conveyed, as follows, except so far as the same shall be restrained or limited by express words contained in any such conveyance; (that is to say,)

Covenants
implied by
"grant."

A covenant that, notwithstanding any act or default done by the promoters of the undertaking, they were at the time of the execution of such conveyance seised or possessed of the lands or premises thereby granted for an indefeasible estate of inheritance in fee simple, free from all incumbrances done or occasioned by them, or otherwise for such estate or interest as therein expressed to be thereby granted, free from incumbrances done or occasioned by them:

A covenant that the grantee of such lands, his heirs, successors, executors, administrators,

and assigns (as the case may be), shall quietly Sect. 132. enjoy the same against the promoters of the undertaking, and their successors, and all other persons claiming under them, and be indemnified and saved harmless by the promoters of the undertaking and their successors from all incumbrances created by the promoters of the undertaking :

A covenant for further assurance of such lands, at the expense of such grantee, his heirs, successors, executors, administrators, or assigns (as the case may be), by the promoters of the undertaking, or their successors, and all other persons claiming under them :

And all such grantees, and their several successors, heirs, executors, administrators, and assigns respectively, according to their respective quality or nature, and the estate or interest in such conveyance expressed to be conveyed, may in all actions brought by them assign breaches of covenants, as they might do if such covenants were expressly inserted in such conveyances.

Cf. the covenants implied under sect. 7 of the Conveyancing Act, 1881.

LAND TAX AND POOR RATE.

*Deficiency to be made Good.***Sect. 133.**

When lands taken, promoters to make good deficiency in land tax & poor rate until works completed & assessed: deficiency to be computed according to rental when lands taken; but promoters may redeem land tax.

CXXXIII. And be it enacted, that if the promoters of the undertaking become possessed by virtue of this or the special Act, or any Act incorporated therewith, of any lands charged with the land tax, or liable to be assessed to the poor's rate, they shall from time to time, until the works shall be completed and assessed to such land tax or poor's rate, be liable to make good the deficiency in the several assessments for land tax and poor's rate by reason of such lands having been taken or used for the purposes of the works; and such deficiency shall be computed according to the rental at which such lands, with any building thereon, were valued or rated at the time of the passing of the special Act; and on demand of such deficiency the promoters of the undertaking, or their treasurer, shall pay all such deficiencies to the collector of the said assessments respectively; nevertheless, if at any time the promoters of the undertaking think fit to redeem such land tax, they may do so, in accordance with the powers in that behalf given by the Acts for the redemption of the land tax.

Public works.

Persons intrusted with the construction of public works under Acts which are incorporated with this Act are, in the absence of special circumstances, within this section (*Wheeler v. Metrop. B. W.*, 1869, L. R. 4 Ex. 303).

Works in several parishes.

Where the works are in several parishes, the liability under this section ceases as to each parish on completion

of the works in that parish (*E. London Ry. Co. v. Whitechurch*, 1874, L. R. 7 H. L. 81, on the similar provision of the special Act of the plaintiff company). Sect. 133.

The fact, that works when completed will not be assessable to poor rates, does not prevent the application of this section (*Stratton v. Metrop. B. W.*, 1874, L. R. 10 C. P. 76). The point was doubted in *Wheeler v. Metrop. B. W.*, *supra*. Section applies though works not assessable when completed.

The section is to be read as though it said "until the works are completed, and such part of them as become assessable property are assessed." Hence the liability under the section ceases on the completion of the works—*e.g.*, the making of a new street—although the property is not then assessable (*Governors of Poor of Bristol v. Mayor of Bristol*, 1887, 18 Q. B. D. 549).

Promoters make good the deficiency in the poor rate caused by their operations, but they are not liable to be directly rated to the poor in respect of the lands taken (*Mayor of London v. St. Andrew, Holborn*, 1867, L. R. 2 C. P. 574). Promoters not liable to be rated in respect of deficiency.

Though the poor rate accounts have been audited and closed for each year, the deficiency for several years may be recovered (*Stratton v. Metrop. B. W.*, 1874, L. R. 10 C. P. 76). Deficiency recoverable though poor rate accounts closed.

The deficiency is to be computed from time to time by comparing the assessed value at the time of the special Act of the lands taken with the assessed value at the time of comparison of such of the lands taken as have again become assessable (*Governors of Poor of Bristol v. Mayor of Bristol*, 1887, 18 Q. B. D. 549). Calculation of deficiency.

The promoters pay according to the rating of the houses at the passing of the Act, notwithstanding that they are empty when taken; and notwithstanding that they are beyond the limits of deviation and have been purchased in order to obtain the withdrawal of opposition (*Overseers of Putney v. L. & S. W. Ry. Co.*, 1891, 1 Q. B. 440).

Where the borough rate and county rate are chargeable on the poor rate, the deficiency in the assessment of the poor rate for the purpose of this section includes any deficiency in respect of amounts raised for borough and county rates, as well as any deficiency in the assessment for poor-law purposes properly so called (*Farmer v. L. & N. W. Ry. Co.*, 1888, 20 Q. B. D. 788). Deficiency includes rates charged on poor rate.

Where the special Act provided that the company should make good any deficiency in any "general pur- "General purposes rate."

Sect. 133. poses rate," it was held that this included all rates made for general purposes, *i.e.*, in which the great majority of parishioners have a common interest. It included, therefore, in Lambeth, the Metropolitan consolidated rate, the lighting rate, and the public libraries rate (*Burruv v. L. & S. W. Ry. Co.*, 1890, 64 L. T. 112, on sect. 14 of the L. & S. W. Ry. Act, 1883).

Company
do not take
benefit
of com-
pounding.

Where at the time of the passing of the special Act the owners of property taken have compounded for rates under the Poor Rate Assessment and Collection Act, 1869, and have been allowed a deduction of twenty-five per cent., the company are not entitled to the advantage of this deduction, but the deficiency for the purpose of this section is calculated on the full rateable value (*St. Leonard, Shore-ditch, v. L. C. C.*, 1895, 2 Q. B. 104).

Several
under-
takings
authorised
by one
statute.

The authority to put in force the compulsory powers of the L. C. A. was conferred by a provisional order confirmed by a statute which described in one schedule, but as separate items, the several improvement schemes promoted by the local authority. It was held that each scheme described in the schedule constituted a separate undertaking, and that the deficiency in the assessment ought to be calculated on each separate undertaking within the rating area affected by it (*Governors of Poor of Bristol v. Mayor of Bristol*, 1887, 18 Q. B. D. 549).

SERVICES OF PROCEEDINGS UPON COMPANY.

Notices, Writs, &c.

CXXXIV. And be it enacted, that any summons or notice, or any writ or other proceeding at law or in equity, requiring to be served upon the promoters of the undertaking, may be served by the same being left at or transmitted through the post directed to the principal office of the promoters of the undertaking, or one of the principal offices where there shall be more than one, or being given or transmitted through the post directed to the secretary, or in case there be no secretary the solicitor of the said promoters.

Sect. 134.

Writs,
&c.,
against
promoters
to be
served at
principal
office, or
on secre-
tary or
solicitor.

R. S. C. Ord. 9, r. 8, regulating service of writs on corporations, applies only "in the absence of any statutory provision"; consequently this section is not affected.

On the similar provision of sect. 138 of the Ry. C. A. 1845, it was held that Paddington was the only "principal office" of the G. W. R., notwithstanding that of the two half-yearly meetings one was to be held at Bristol, and that half the directors were to be chosen from the residents there. All the general business was transacted at Paddington (*Garton v. G. W. Ry. Co.*, 1858, E. B. & E. 837).

"Principal
office."

A Scotch railway company had running powers over an English railway to Carlisle, and their only officer in England was a booking clerk at a station at Carlisle, whose sole duty was to issue tickets. The Scotch railway company used the station and paid a rental to the English company, who had sole control of it. It was held that the booking clerk was not a head officer of the Scotch company who could properly be served with a writ issued

Scotch
company.

Sect. 134. against them (*Mackereth v. Glasgow & S. W. Ry. Co.*, 1873, L. R. 8. Ex. 149).

Where a Scotch railway company had six miles of its line in England, and had the joint use with an English company of a station at Carlisle for the purpose of receiving passengers and goods, it was held to be both a Scotch and an English company, and service of a writ on the secretary while attending a meeting of shareholders in London was good (*Wilson v. Caledonian Ry. Co.*, 1850, 5 Ex. 822).

Irish
company.

Under the special Act of an Irish company service of writs was to be made on the secretary or at the office of the company, or, in case the same should not be found or known, on any director of the company. A writ issued in England was served on a director in London. The company had no office or secretary in England. It had a known office in Ireland. The service was bad (*Evans v. Dublin, &c. Ry. Co.*, 1845, 14 M. & W. 142).

As to service of county court process, see *Brown v. L. & N. W. Ry. Co.*, 1863, 4 B. & S. 326; *Adams v. G. W. Ry. Co.*, 1861, 30 L. J. Ex. 124; *Minor v. L. & N. W. Ry. Co.*, 1856, 1 C. B. N. S. 325.

Service on
solicitors.

Service on the solicitors of the company is sufficient, if authorized or subsequently recognized by the company (*Reg. v. Maryport, &c. Ry. Co.*, 1850, 15 L. T. O. S. 134). A company who wish notices to be served at their office or upon their officers, and not upon their solicitors, must state such wish clearly and at once. They must not, in a case of an award, lie by till the award is made, and then seek to set it aside as irregular (*Reg. v. Metrop. Ry. Co.*; *Ex p. Knock*, 1867, 17 L. T. 291).

ACTION FOR TRESPASS OR WRONGFUL PROCEEDING UNDER ACT.

Tender of Amends.

CXXXV. And be it enacted, that if any party shall have committed any irregularity, trespass, or other wrongful proceeding in the execution of this or the special Act, or any Act incorporated therewith, or by virtue of any power or authority thereby given, and if, before action brought in respect thereof, such party make tender of sufficient amends to the party injured, such last-mentioned party shall not recover in any such action; and if no such tender shall have been made it shall be lawful for the defendant, by leave of the Court where such action shall be pending, at any time before issue joined, to pay into Court such sum of money as he shall think fit, and thereupon such proceedings shall be had as in other cases where defendants are allowed to pay money into Court.

Sect. 135.

In case of irregularity or trespass, party may tender amends, or pay into Court.

RECOVERY OF FORFEITURES, PENALTIES, AND COSTS.

And with respect to the recovery of forfeitures, penalties, and costs, be it enacted as follows:—

- § 136. Summary Proceeding for Penalties before Two Justices.
- § 138. Mode of Distress.
- § 139. Application of Penalties.
- § 140. Distress against Treasurer.
- § 141. Distress not Unlawful for Want of Form.
- § 143. Penalty on Witnesses in Default.
- § 145. No *Certiorari* for Want of Form.
- § 146. Appeal to Quarter Sessions.
- § 147. Jurisdiction of Quarter Sessions.
- § 148. Receiver of Metropolitan Police to receive Penalties in his District.
- § 149. Perjury.

Summary Proceeding before Two Justices.

Sect. 136.

Penalties
may be
recovered
summarily
before two
justices.

CXXXVI. Every penalty or forfeiture imposed by this or the special Act, or by any bye-law made in pursuance thereof, the recovery of which is not otherwise provided for, may be recovered by summary proceeding before two justices.

The remainder of the section, which prescribed the procedure before the justices, was repealed as to England (as well as sects. 137, 142, and 144) by the Summary Jurisdiction Act, 1884, and entirely by the Statute Law Revision Act, 1892. As to summary proceedings, see now the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49).

Distress in Default of Payment.

Sect. 137.

Sect. 137 was repealed by the St. L. R. A. 1892.

Mode of Distress.

CXXXVIII. Where in this or the special Act, or any Act incorporated therewith, any sum of money, whether in the nature of penalty, costs, or otherwise, is directed to be levied by distress, such sum of money shall be levied by distress and sale of the goods and chattels of the party liable to pay the same; and the overplus arising from the sale of such goods and chattels, after satisfying such sum of money, and the expenses of the distress and sale, shall be returned, on demand, to the party whose goods have been distrained.

Sect. 138.Distress
may be
sold.*Application of Penalties.*

CXXXIX. The justices by whom any such penalty or forfeiture shall be imposed may, where the application thereof is not otherwise provided for, award not more than one half thereof to the informer, and shall award the remainder to the overseers of the poor of the parish in which the offence shall have been committed, to be applied in aid of the poor rate of such parish.

Sect. 139.Justices
may award
not more
than half
of penalty
to in-
former,
and rest in
aid of
poor rate.

The remainder of the section, relating to extra parochial places, was repealed by the St. L. R. A. 1875 (38 & 39 Vict. c. 66).

Distress against Treasurer.

CXL. If any such sum shall be payable by the promoters of the undertaking, and if sufficient goods of the said promoters cannot be found whereon to levy the same, it may, if the amount thereof do not exceed twenty pounds, be recovered by distress of the goods of the treasurer of the said promoters, and the justices aforesaid, or either of them, on application, shall issue their or his

Sect. 140.In default
of goods
of the pro-
motors,
and if
amount
does not
exceed
20l., it
may be

Sect. 140. warrant accordingly; but no such distress shall
 recovered by distress on goods of treasurer. issue against the goods of such treasurer unless
 Treasurer to have remedy against promoters. seven days' previous notice in writing, stating the
 amount so due, and demanding payment thereof,
 have been given to such treasurer or left at his
 residence; and if such treasurer pay any money
 under such distress as aforesaid, he may retain the
 amount so paid by him, and all costs and expenses
 occasioned thereby, out of any money belonging
 to the promoters of the undertaking coming into
 his custody or control, or he may sue them for the
 same.

Distress not Unlawful through want of Form.

Sect. 141. CXLI. No distress levied by virtue of this or
 Distress not to be unlawful for defect of form. the special Act, or any Act incorporated therewith,
 shall be deemed unlawful, nor shall any party
 making the same be deemed a trespasser, on
 account of any defect or want of form in the
 summons, conviction, warrant of distress, or other
 proceeding relating thereto, nor shall such party
 be deemed a trespasser *ab initio* on account of any
 irregularity afterwards committed by him, but all
 persons aggrieved by such defect or irregularity
 may recover full satisfaction for the special damage
 in an action upon the case.

Cf. the similar provision of sect. 19 of the Distress for
 Rent Act, 1737 (11 Geo. 2, c. 19): Fawcett's Landlord
 and Tenant, 2nd ed. p. 290.

Penalties to be Sued for within Six Months.

Sect. 142. Sect. 142 was repealed by the St. L. R. Act, 1892.

Penalty on Witnesses.

Sect. 143. CXLIII. It shall be lawful for any justice to
 Justice may summon witnesses in summon any person to appear before him as a
 witness in any matter in which such justice shall
 have jurisdiction, under the provisions of this or

the special Act, at a time and place mentioned in such summons, and to administer to him an oath to testify the truth in such matter; and if any person so summoned shall, without reasonable excuse, refuse or neglect to appear at the time and place appointed for that purpose, having been paid or tendered a reasonable sum for his expenses, or if any person appearing shall refuse to be examined upon oath or to give evidence before such justice, every such person shall forfeit a sum not exceeding five pounds for every such offence.

Sect. 143.

proceed-
ings before
him: wit-
ness in
default to
be liable to
penalty of
5*l*.

This section is repealed as to England, so far as relates to any matter to which the Summary Jurisdiction Acts apply (Summary Jurisdiction Act, 1884 (47 & 48 Vict. c. 43, s. 4)).

Form of Conviction.

Sect. 144 was repealed by the St. L. R. Act, 1892.

Sect. 144.

*No Proceeding to be Quashed or Removed by
Certiorari for want of form.*

CXLV. No proceeding in pursuance of this or the special Act, or any Act incorporated therewith, shall be quashed or vacated for want of form, nor shall the same be removed by *certiorari* or otherwise into any of the superior courts.

Sect. 145.

No *certio-
rari* for
want of
form.

A similar provision in a special Act prior to the L. C. A. was held to take away *certiorari* in a case of mere irregularity of jurisdiction—as where an inquisition was taken not before the sheriff or under-sheriff as required by the statute, but before persons appointed for the purpose by the sheriff—but not in a case of total want of jurisdiction (*R. v. Sheffield Ry. Co.*, 1839, 11 A. & E. 194; and see *R. v. Bristol & Exeter Ry. Co.*, 1838, *ibid.*, p. 202, n.).

Certiorari
only taken
away in
case of ir-
regularity.

The clause excluding *certiorari* does not preclude the High Court from exercising a superintendence over the proceedings so as to see that what is done is in pursuance of the statute. Hence *certiorari* will issue where magistrates who are interested take part in the proceedings (*R. v. Cheltenham Commissioners*, 1841, 1 Q. B. 467).

Sect. 145.

Certiorari
for funda-
mental ir-
regularity.

Disquali-
fying in-
terest.

And under the L. C. A. it is well settled that, notwithstanding this section, *certiorari* will lie in a case where the proceedings are fundamentally irregular—where, for instance, the tribunal is disqualified through interest, or where it exceeds its jurisdiction.

Thus *certiorari* will lie where the sheriff, being interested, has no jurisdiction (*Reg. v. L. & N. W. Ry. Co.*, 1864, 12 W. R. 208). Though if the landowner is aware of the circumstance and does not object, he will be held to have waived the defect and *certiorari* will be refused (*Ex p. Baddeley*, 1848, 5 D. & L. 575).

The writ of *certiorari*, since it has been expressly taken away by statute, can only issue where the jurisdiction has been exceeded, and if the jury had before it materials upon which it was entitled to award anything in respect of the injury likely to result from the establishment of the works, then since the Court has nothing to do with the amount, it cannot say that the jurisdiction has been exceeded because the jury may have awarded too much, or because the under-sheriff has understated or overstated the result of the evidence given (see per Lord Halsbury, L.-C., in *Couper Essex v. Acton L. B.*, 1889, 14 App. Cas., p. 160).

Excess of
jurisdic-
tion.

An excess of jurisdiction on the part of the jury can be corrected, as where they assess damages in respect of a matter which gives no right to compensation (*Caledonian Ry. Co. v. Ogilvie*, 1856, 2 Macq. 229).

Compensa-
tion erro-
neously
given.

Where a jury summoned under sect. 68 have, in awarding compensation, taken into consideration one claim among others as to which they had no jurisdiction, a *certiorari* lies, although such excess of jurisdiction does not appear upon the face of the proceedings (*Re Penny & S. E. Ry. Co.*, 1857, 7 E. & B. 660).

Where in consequence of the misdirection of the under-sheriff, the jury include in their verdict an item improper for compensation, and one total sum is awarded, the proceedings will be quashed by *certiorari* (*Reg. v. Scard*, 1894, 10 T. L. R. 545).

Where a jury, in addition to awarding compensation for land taken, awarded compensation in respect of the cost of a bridge, which the company would be bound to construct under sect. 20 of the Railway Clauses Act, it was held that in spite of this section a *certiorari* would lie to remove the proceedings (*S. Wales Ry. Co. v. Richards*, 1849, 13 Q. B. 988).

Where the jury have decided a question of title the proceedings will be removed by *certiorari* and quashed (*Reg. v. L. & N. W. Ry. Co.*, 1854, 3 E. & B. 443; *Horrocks v. Met. Ry. Co.*, 1863, 11 W. R. 910). Sect. 145.
Question of title.

If the under-sheriff uses words which may imply that the jury are to disregard certain evidence which they ought to regard, yet if the evidence as to the value of the property is substantially before the jury, the Court will not interfere by *certiorari* (*Streatham & General Estates Co. v. Comm. of Works*, 1888, 52 J. P. 615). Rejection of evidence.

If there is any excess of jurisdiction committed in determining the amount of compensation, the inquisition may be removed by *certiorari*; but where an award is on the face of it regular, a plea to an action on the award which brings in question the amount allowed in respect of a particular item—*e.g.*, that compensation has been given for a loss of a whole stream when the claimant was only entitled to the flow of part—is bad (*Mortimer v. S. Wales Ry. Co.*, 1859, 1 E. & E. 375). Plea to action on award.

An inquisition is not rendered void by an omission to strike the special jury in sufficient time to allow three days before the day of the inquisition for summoning them, and by the attendance of only eight jurymen, who give the verdict. This is an irregularity only and does not nullify the proceedings. For *certiorari* there must be want of jurisdiction (*Ex p. G. W. Ry. Co.*, 1851, 18 L. T. (O. S.) 92). No *certiorari* for irregularity.

Where it was alleged that the jury in assessing compensation had taken into consideration matters which were not legally the subject of compensation, but five months had been allowed to expire without taking any objection to the proceedings; since this exceeded the time allowed for setting aside an award, a writ of *certiorari* was refused (*R. v. Sheward*, 1880, 9 Q. B. D. 741). Proceedings must be taken promptly.

Appeal to Quarter Sessions.

CXLVI. If any party shall feel aggrieved by any determination or adjudication of any justice with respect to any penalty or forfeiture under the provisions of this or the special Act, or any Act incorporated therewith, such party may appeal to the General Quarter Sessions [for the county or Sect. 146.
Appeal against penalties lies to quarter sessions: to be

Sect. 146. place in which the cause of appeal shall have arisen; but no such appeal shall be entertained unless it be made within four months next after the making of such determination or adjudication, nor unless ten days' notice in writing of such appeal, stating the nature and grounds thereof, be given to the party against whom the appeal shall be brought, nor unless the appellant forthwith after such notice enter into recognizances, with two sufficient sureties, before a justice, conditioned duly to prosecute such appeal, and to abide the order of the Court thereon].

brought
within
four
months on
ten days'
notice in
writing.

The part in brackets was repealed as to England by the Summary Jurisdiction Act, 1884 (47 & 48 Vict. c. 43), s. 4. See now the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49).

Power of Court of Quarter Sessions.

Sect. 147. CXLVII. At the Quarter Sessions for which such notice shall be given, the Court shall proceed to hear and determine the appeal in a summary way, or they may, if they think fit, adjourn it to the following sessions; and upon the hearing of such appeal the Court may, if they think fit, mitigate any penalty or forfeiture, or they may confirm or quash the adjudication, and order any money paid by the appellant, or levied by distress upon his goods, to be returned to him, and may also order such further satisfaction to be made to the party injured as they may judge reasonable; and they may make such order concerning the costs, both of the adjudication and of the appeal, as they may think reasonable.

Jurisdic-
tion of
quarter
sessions.

Receiver of Metropolitan Police District to Receive Penalties incurred within District.

Sect. 148. CXLVIII. Provided always, and be it enacted, that notwithstanding anything herein or in the

Penalties

special Act, or any Act incorporated therewith contained, every penalty or forfeiture imposed by this or the special Act, or any Act incorporated therewith, or by any bye-law in pursuance thereof, in respect of any offence which shall take place within the Metropolitan Police District, shall be recovered, enforced, accounted for, and, except where the application thereof is otherwise specially provided for, shall be paid to the Receiver of the Metropolitan Police District, and shall be applied in the same manner as penalties or forfeitures, other than fines upon drunken persons, or upon constables for misconduct, or for assaults upon police constables, are directed to be recovered, enforced, accounted for, paid, and applied by the Metropolitan Police Courts Act, 1839; and every order or conviction of any of the police magistrates in respect of any such forfeiture or penalty shall be subject to the like appeal and upon the same terms as is provided in respect of any order or conviction of any of the said police magistrates by the said last-mentioned Act; and every magistrate by whom any order or conviction shall have been made shall have the same power of binding over the witnesses who shall have been examined, and such witnesses shall be entitled to the same allowance of expenses, as he or they would have had or been entitled to in case the order, conviction, and appeal had been made in pursuance of the provisions of the said last-mentioned Act.

Sect. 148.
 in Metro-
 politan
 Police
 District to
 go to re-
 ceiver and
 be applied
 under 2 & 3
 Vict. c. 71:
 appeals
 from police
 magis-
 trates to
 be accord-
 ing to
 same Act.

As to penalties going to the Receiver for the Metropolitan Police District, see *Receiver for Metrop. Police District v. Bell*, 1872 (L. R. 7 Q. B. 433).

*Perjury.*Sect. 149.

Person
under oath
giving
false evi-
dence in
proceed-
ings under
Act to be
liable to
penalties
of perjury.

CXLIX. And be it enacted, that any person who upon any examination upon oath under the provisions of this or the special Act, or any Act incorporated therewith, shall wilfully and corruptly give false evidence, shall be liable to the penalties of wilful and corrupt perjury.

ACCESS TO SPECIAL ACT.

And with respect to the provision to be made for affording access to the special Act by all parties interested, be it enacted as follows:—

§ 150. Copies of Act to be Kept and Deposited.

§ 151. Penalty for Default.

Copies to be kept by Company, and deposited with Clerk of Peace for County, and to be open to Inspection.

CL. The company shall at all times after the expiration of six months after the passing of the special Act keep in their principal office of business a copy of the special Act, printed by the printers to her Majesty, or some of them; and where the undertaking shall be a railway, canal, or other like undertaking, the works of which shall not be confined to one town or place, shall also within the space of such six months deposit in the office of each of the clerks of the peace of the several counties into which the works shall extend a copy of such special Act, so printed as aforesaid; and the said clerks of the peace shall receive, and they and the company respectively shall retain, the said copies of the special Act, and shall permit all persons interested to inspect the same, and make extracts or copies therefrom, in the like manner and upon the like terms and under the like penalty for default as is provided

Sect. 150.
Company to keep copy of special Act at principal office and also deposit copy with clerks of peace for inspection by all persons interested.

Sect. 150. in the case of certain plans and sections by the
 7 Will. 4 Parliamentary Documents Deposit Act, 1837.
 & 1 Vict.
 c. 83.

Penalty for Default.

Sect. 151. CLI. If the company shall fail to keep or de-
 posit, as hereinbefore mentioned, any of the said
 copies of the special Act, they shall forfeit twenty
 pounds for every such offence, and also five pounds
 for every day afterwards during which such copy
 shall not be so kept or deposited.

Penalty
 for default
 in keeping
 or deposit-
 ing copies
 of special
 Act.

GENERAL CLAUSES.

Extent of Act.

Sect. 152. CLII. And be it enacted, that this Act shall
 not extend to *Scotland*.

Act not to
 extend to
 Scotland.

Alteration of Act.

Sect. 153. Sect. 153 was repealed by the St. L. R. Act, 1875.

SCHEDULES.

SCHEDULE (A).

Form of Conveyance.

I of in consideration of the sum of
 paid to me [*or, as the case may be, into the Bank of*
 England or Bank of Ireland], in the name and with the
 privity of the Accountant-General of the Court of
 Chancery, *Ex parte* "The promoters of the undertaking"
 [*naming them*], [*or to A.B. of and C.D. of two*
 trustees appointed to receive the same], pursuant to the
 [*here name the special Act*], by the [*here name the company*
or other promoters of the undertaking], incorporated [*or con-*
 stituted] by the said Act, do hereby convey to the said
 company [*or other description*], their successors and assigns,
 all [*describing the premises to be conveyed*], together with all
 ways, rights, and appurtenances thereto belonging, and all
 such estate, right, title, and interest in and to the same as
 I am or shall become seised or possessed of, or am by the
 said Act empowered to convey, to hold the premises to the
 said company [*or other description*], their successors and
 assigns, for ever, according to the true intent and meaning
 of the said Act. In witness whereof I have hereunto set
 my hand and seal, the day of in the year of
 our Lord .

Sect. 81.

SCHEDULE (B).

Form of Conveyance on Chief Rent.

I of in consideration of the rent-charge to
 be paid to me, my heirs and assigns, as hereinafter
 mentioned, by "the promoters of the undertaking"
 [*naming them*], incorporated [*or constituted*] by virtue of
 the [*here name the special Act*], do hereby convey to the
 said company [*or other description*], their successors and

Sect. 81.

assigns, all [*describing the premises to be conveyed*], together with all ways, rights, and appurtenances thereunto belonging, and all my estate, right, title, and interest in and to the same and every part thereof, to hold the said premises to the said company [*or other description*], their successors and assigns, for ever, according to the true intent and meaning of the said Act, they the said company [*or other description*], their successors and assigns, yielding and paying unto me, my heirs and assigns, one clear yearly rent of by equal quarterly [*or half-yearly, as agreed upon*] portions henceforth, on the [*stating the days*], clear of all taxes and deductions. In witness whereof I hereunto set my hand and seal, the day of in the year of our Lord .

SCHEDULE (C).

Form of Conviction.

(Repealed by St. L. R. A. 1892.)

THE LANDS CLAUSES CONSOLIDATION ACTS AMENDMENT ACT, 1860.

23 & 24 VICT. c. 106.

An Act to amend the Lands Clauses Consolidation Acts, 1845, in regard to sales and compensation for land by way of a rent-charge, annual feu duty, or ground annual, and to enable her Majesty's Principal Secretary of State for the War Department to avail himself of the powers and provisions contained in the same Acts.

[20th August, 1860.]

- § 1. Part of Section 10 of Act of 1845 repealed.
- § 2. Power to sell on Chief Rent extended.
- § 3. Similar Proviso with regard to 8 & 9 Vict. c. 19, s. 10 (Scotch Act).
- § 4. Mode of Settling Amount of such Chief Rent.
- § 5. Borrowing Powers reduced in Proportion.
- § 6. Sections 6—15 of Act of 1845 extended to Purchases of Land for Public Purposes.
- § 7. Secretary for War may use Powers of these Acts.
- § 8. This Act and Act of 1845 to be construed together.

Whereas it is expedient to extend the provisions of the Lands Clauses Consolidation Act, 1845, in regard to sales of land, or compensation for damages, in consideration of an annual rent-charge, annual feu duty, or ground annual, and to enable Her Majesty's Principal Secretary of State for the War Department to avail himself of the powers and provisions contained in the same Act for the purchase of lands wanted for the service of the War Department or for the defence of the realm: Be it enacted, as follows:—

Preamble
repealed
by the St.
L. R. A.
1892.

1. So much of the 10th section of the Lands Clauses Consolidation Act, 1845, as provides that, save in the case of lands of which any person is seised in fee, or

Sect. 1.

Repeal of
part of

THE
LANDS CLAUSES CONSOLIDATION ACT,
1869.

32 & 33 VICT. c. 18.

An Act to amend the Lands Clauses Consolidation Act.

[24th June, 1869.]

- § 1. Taxation of Costs of Arbitrations by Masters of Superior Courts.
- § 2. Repeal of Section 33 of Regulation of Railways Act, 1868.
- § 3. High Bailiff of Westminster substituted for Sheriff in Cases of Determination of Compensation by a Jury.
- § 4. Short Title and Construction of Act.

Whereas it is expedient that the provisions contained in the Lands Clauses Consolidation Act, 1845, should be amended:

Be it therefore enacted, &c.

*Taxation of Costs of Arbitrations by Master of
Superior Courts.*

Sect. 1. Sect. 1 was repealed by the L. C. (Taxation of Costs) Act, 1895 (*infra*).

*Repeal of Section 33 of Regulation of Railways Act,
1868.*

Sect. 2. Sect. 2 was repealed by the St. L. R. A. 1883 (46 & 47 Vict. c. 39).

High Bailiff of Westminster.

Sect. 3. 3. Where any lands by the special Act authorized to be taken are situate within the city and liberty of Westminster, then, with respect to those

High
bailiff of

lands, in every case in which any question of disputed compensation is required by the Lands Clauses Consolidation Act, 1845, or any Act amending the same, to be determined by the verdict of a jury, the high bailiff of the city and liberty of Westminster, or his deputy, shall be deemed to be substituted for the sheriff throughout such of the enactments of the Lands Clauses Consolidation Act, 1845, and any Act amending the same, as relate to the reference to a jury.

Sect. 3.

West-
minster
substi-
tuted for
sheriff in
cases of
determi-
nation of
compensa-
tion by a
jury.

Short Title and Construction of Act.

4. This Act may be cited as "The Lands Clauses Consolidation Act, 1869," and shall be construed as one with the Lands Clauses Consolidation Act, 1845, and the Lands Clauses Consolidation Acts Amendment Act, 1860, and these Acts and this Act may be cited together as the Lands Clauses Consolidation Acts, 1845, 1860, and 1869.

Sect. 4.

Short title.

THE
LANDS CLAUSES (UMPIRE) ACT, 1883.

46 VICT. c. 15.

An Act to amend the Lands Clauses Consolidation Act, 1845.
[18th June, 1883.]

Whereas it is expedient that the provisions contained in the Lands Clauses Consolidation Act, 1845, in relation to the appointment of umpires, should be amended:

Be it therefore enacted, &c.:

Appointment of Arbitrator by Board of Trade.

Sect. 1.
Amend-
ment of
sect. 28
of L. C. A.
1845, ex-
tending
power of
appoint-
ment of
umpire by
Board of
Trade.

1. The following words in section 28 of the Lands Clauses Consolidation Act, 1845, are hereby repealed, that is to say, "in any case in which a railway company shall be one party to an arbitration, and two justices in any other case," and that section shall, in relation to the appointment of any umpire under the provisions thereof after the passing of this Act, apply as if such words were omitted, and the same section shall accordingly be read and have effect as follows:

28. If in either of the cases aforesaid the said arbitrators shall refuse or shall for seven days after request of either party to such arbitration neglect to appoint an umpire, the Board of Trade shall, on the application of either party to such arbitration, appoint an umpire, and the decision of such umpire on the matters on which the arbitrators shall differ, or which shall be referred to him under this or the special Act, shall be final.

Short Title.

Sect. 2.

2. This Act may be cited as the Lands Clauses (Umpire) Act, 1883.

THE
LANDS CLAUSES (TAXATION OF COSTS)
ACT, 1895.

58 VICT. c. 11.

*An Act to amend the law relating to the Taxation of Costs
under the Lands Clauses Acts.*

[14th May, 1895.]

Be it enacted, &c. :

1.—(1.) Where, under the Lands Clauses Consolidation Act, 1845, or any Act incorporating the same, any question of disputed compensation is determined by the verdict of a jury, or by arbitration, the costs of and incidental to the inquiry or to the arbitration and award (as the case may be) shall, if either party so requires, be taxed and settled as between the parties by one of the masters of the Supreme Court, and such fees shall be taken in respect of the taxation as may be fixed in pursuance of the enactments relating to the fees to be taken in the offices of those masters; and all those enactments (including the enactments relating to the taking of fees by means of stamps) shall extend to the fees in respect of such taxation.

Sect. 1.
Costs of
inquiry
and arbi-
tration to
be settled
by master.

(2.) Sect. 45 of the Regulation of Railways Act, 1868, and sect. 1 of the Lands Clauses Consolidation Act, 1869, are hereby repealed.

The first sub-sect. of this section is identical with the repealed sect. 1 of the L. C. A. 1869, save that the provision for taxation is applied to an inquiry before a jury as well as to arbitrations.

Sect. 1.

Applica-
tion of
section.

Sect. 1 of the L. C. A. 1869 was not retrospective, and applied only to arbitrations purely and simply under the L. C. Acts, and not to those which included matters which would not be the subject of arbitration under those Acts, except for the agreement between the parties (*Doulton v. Metrop. Board of Works*, 1870, L. R. 5 Q. B. 333).

Where, before the award had been made, the parties had agreed that the company should pay the costs of and incidental to that agreement and to the reference and arbitration, and of the conveyance of the lands and premises, including valuers' and surveyors' charges, and solicitors' charges as between solicitor and client, they were held to have taken themselves out of the operation of sect. 1 of the Act of 1869, and the costs might be taxed under the Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 38 (*Wombwell v. Corporation of Barnsley*, 36 L. T. 708).

Master
not bound
to tax
unless
claimant
entitled.

The master is not bound under this section to tax the costs of an arbitration unless the claimant is entitled to costs under sect. 34 of the Act of 1845 (*Fitzhardinge v. Gloucester, &c. Canal Co.*, 1872, L. R. 7 Q. B. 776).

Where costs are taxed by a master under this section, the Court has no jurisdiction to review the taxation (*Sandback Charity Trustees v. N. Staff. Ry. Co.*, 3 Q. B. D. 1; *Owen v. L. & N. W. Ry. Co.*, 1867, L. R. 3 Q. B. 54. See also sect. 52 of L. C. A. 1845).

Sect. 2.

Short title.

2. This Act may be cited as the Lands Clauses ('Taxation of Costs') Act, 1895.

FORMS

UNDER THE LANDS CLAUSES CONSOLIDATION ACTS.



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(I.)—PURCHASE, &c. BY AGREEMENT.

Agreement for Sale and Purchase of Land.

MEMORANDUM OF AGREEMENT, made this — day of —, 19—, between A. B. of — (hereinafter called “the vendor”) of the one part, and the — Company (hereinafter called “the company”), by their agent C. D. of —, in the county of —, land agent, of the other part:—

Form 1.

(1.) By virtue of the powers and subject to the provisions of the [*special Act*], and of the Acts incorporated therewith, the vendor agrees to sell, and the company agree to purchase, for the purposes of the works authorised by the said Acts, for the sum of — pounds, the inheritance in fee simple in possession, free from incumbrances, of and in all that piece of land, containing — or thereabouts, situate in the parish of —, in the county of —, and being the land and premises numbered — in the map or plan and book of reference thereto in respect of the said parish of the works authorised by the said Acts, deposited at the office of the clerk of the peace for the said county, which premises are more particularly described in the schedule hereunto, and delineated on the plan attached hereto, and thereon coloured —, together with all mines, minerals, timber, rights, and interests therein or thereto belonging.

Premises sold, and price.

(2.) Such price shall include satisfaction and compensation for all damage, loss, or inconvenience, whether permanent,

What is included in price.

Form 1. temporary or recurring, occasioned by severing the property purchased from the vendor's other property, or by otherwise injuriously affecting such other property by the exercise of the powers of the said Act, and of the Acts incorporated therewith, and also for all other damage of every description occasioned by the exercise of such powers and for accommodation works of all kinds [*if the agreement provides for specified accommodation works, add "except such, if any, as are hereby specially provided for"*] which might otherwise be required to be made or done under the said Acts for the better enjoyment, protection, or accommodation of the adjoining property and remainder of the estate of the vendor. And the vendor hereby consents to such alteration of levels and works as may be found convenient in making and maintaining the said works.

Allowance
for inac-
curacy of
measure-
ment.

(3.) If the measurement of the land, as above stated, be found inaccurate, a proportionate addition or allowance shall be paid or allowed by either party, as the case may require.

Sale is
subject to
ease-
ments, &c.

(4.) The premises are sold subject to all quit and other rents, incidents of tenure, and easements affecting the same, and subject also to existing tenancies [*or to an indenture of lease dated, &c., and made between, &c., whereby the premises were demised, &c. (Where part only of lands in lease are taken, provision must be made for apportioning the rent)*].

Title and
convey-
ance.

(5.) The vendor shall within ——— days from the date hereof deliver to the solicitors of the company an abstract of title to the premises hereby agreed to be sold, but to such extent only as they shall require, and shall produce the deeds and muniments of title and other evidences in proof of the same, and the vendor and other necessary parties shall execute proper conveyances to the company, or as they may direct, of the premises, with the usual statutory covenants for title and the usual acknowledgment for production, and undertaking for the safe custody, of deeds and documents not handed over.

(6.) The company shall be at liberty (subject to the **Form 1.**
existing tenancies) to take possession of the premises at **Posses-**
any time hereafter, and if required they shall, before taking **sion.**
possession, pay the said purchase and compensation money
into the — Bank in the joint names of the vendor and
of the company or their nominee, where the same is to
remain at the risk of the company until the purchase shall
be completed, whereupon it shall be paid to the vendor, or
other parties entitled thereto, or otherwise into Court for
their benefit as provided by the said Acts. But such entry
shall not be an acceptance of title, and the company shall
be entitled to any interest allowed by the said bank.

(7.) The purchase shall be completed on or before the **Comple-**
— day of — next, at the offices of Messrs. — at **tion.**
—.

(8.) The company shall pay to the vendor, or other **Interest.**
parties entitled thereto, interest at the rate of five per cent.
per annum on such purchase and compensation money, or
on so much thereof as shall remain unpaid (notwithstanding
any deposit thereof as aforesaid) from the said [*day fixed*
for completion], or from the time of their taking possession
(whichever shall first happen), until the completion of the
purchase and payment of the said purchase and compensa-
tion money or the balance thereof. All rates, taxes, and **Out-**
other outgoings (to be apportioned, if necessary) shall be **goings.**
paid by the vendor until completion or taking possession
as aforesaid (whichever shall first happen).

(9.) The vendor shall release to the company any right **Release of**
of pre-emption that he may be entitled to under the Lands **right of**
Clauses Consolidation Act, 1845, in respect of the premises **pre-**
hereby agreed to be sold. **emption.**

(10.) The land tax and rent charge in lieu of tithes (if **Land tax,**
any) shall be apportioned rateably between the land sold **&c.**
to the company and the other land of the vendor charged
therewith.

(11.) In case the company shall at any time before the **If more**
actual completion of the works authorized by the said Act **land re-**
quired.

Form 1. require for the purposes thereof any additional land belonging to the vendor, adjoining or near to the land hereby agreed to be sold, the same shall be taken and paid for by the company after the rate of £—— per acre, without any further payment for or in respect of severance or other damage or instead of accommodation works, and all stipulations and provisions of this agreement, so far as applicable, shall be deemed to extend to such additional land as if it were included in the sale and purchase hereby specially agreed on.

Costs. (12.) The company shall pay the sum of £—— in respect of the vendor's costs of this agreement and preliminary thereto, and shall also pay the vendor's costs of deducing and verifying the title and of the conveyance to the company, as provided by the Lands Clauses Consolidation Act, 1845.

As witness the hands of the said A. B. and C. D.

(Signed) ——.

*Agreement for Sale and Purchase in consideration of
an Annual Rent-charge.*

Form 2. MEMORANDUM OF AGREEMENT made this —— day of ——, 19——, between A. B. of —— (hereinafter called "the vendor") of the one part, and the —— Company (hereinafter called "the company") by their agent C. D. of —— of the other part:—

Premises sold and amount of rent-charge. (1.) By virtue of the powers and subject to the provisions of the [*special Act*] and of the Acts incorporated therewith, the vendor agrees to sell and the company agree to purchase, for the purposes of the works authorized by the said Acts, in consideration of an annual rent charge of £—— to be made payable and secured as hereinafter mentioned, the inheritance in fee simple in possession free from incumbrances of and in all that piece of land [*continue as in Clause 1 of Form 1*].

(2.) The said rent charge shall commence on the ——— day of ———, 19—, or on such earlier day as the company take possession of the premises or of any part thereof, and shall be payable half-yearly on the ——— day of ——— and the ——— day of ——— in each year, and shall be charged and recoverable in manner specified by sect. 11 of the Lands Clauses Consolidation Act, 1845. For the purpose of the first half-yearly payment the rent charge shall, if necessary, be apportioned.

Form 2.

Com-
mence-
ment and
payment
of, and
security
for rent-
charge.

(3.) The company shall be at liberty, subject to existing tenancies, at any time hereafter to take possession of the premises on giving ——— days' notice in writing to the vendor. All rates, taxes, and other outgoings shall be paid, and all rents received, by the vendor up to the time when the rent charge becomes payable, such sums to be apportioned if necessary.

Posses-
sion.Out-
goings.

[*Add Clauses (2), (4), (5), (9), (10) and (12) from Form 1.*]

As witness, &c.

(Signed) ———.

Nomination of Surveyors under Sect. 9.

The ——— Company and A. B. (*landowner*).

Form 3.

WHEREAS under and by virtue of the provisions of [*special Act*] and of the Acts incorporated therewith, the ——— Company are authorized to purchase and take for the purpose of the said Acts the hereditaments described in the schedule hereunder written, and the said company have agreed with the said A. B., that the purchase money and compensation to be paid by the said company for the purchase thereof shall be the sum of £——. And whereas the said A. B., being [*describe the nature of his interest or state his incapacity*], is not empowered to sell except under the provisions contained in the Lands Clauses Consolidation Act, 1845, the same being one of the Acts incorporated with the said above-named Act, and under sect. 9 of the

Form 3. said Lands Clauses Consolidation Act, 1845, it is requisite that the purchase money and compensation to be paid for any lands taken from any party under any disability or incapacity, and not having power to sell or convey such lands except under the provisions of such Acts, shall not be less than shall be determined by the valuation of two able practical surveyors, one to be nominated by the said company, the other by the said A. B. Now, therefore, in pursuance of and in obedience to the directions of the said 9th sect. of the said Lands Clauses Consolidation Act, 1845, we the said — Company do hereby nominate on our behalf C. D., of —, an able practical surveyor, and the said A. B. does hereby nominate on his behalf E. F., of —, an able practical surveyor, for the purpose of determining by their valuation what is the value of the fee simple of and in the said hereditaments and premises comprised in the said schedule, with all the appurtenances thereto belonging (except mines and minerals), including compensation for all damage or injury to be sustained by the said A. B. by reason of the severing of the lands purchased from the other lands belonging to the same estate, or otherwise injuriously affecting such other lands by the exercise of the powers of the said Acts.

Given under the common seal of the above-named — Company and under the seal of the said A. B. this — day of —, 19—. .

THE SCHEDULE above referred to.

All the piece or parcel of land situate, lying, and being in the parish of —, in the county of —, containing together by admeasurement — or thereabouts, which said piece or parcel of land is numbered — in the plan and book of reference in respect of the parish of —, deposited at the office of the clerk of the peace for the county of —, in connection with the application to Parliament for the said [*special*] Act.

Valuation of Surveyors.

In pursuance of the nomination annexed hereto, we, Form 4.
 C. D. and E. F., the surveyors mentioned in the said nomination, have determined, and we do hereby certify, that the sum of £—— is the value of the hereditaments and premises described in the schedule to the said nomination and all the appurtenances thereunto belonging (except mines and minerals), in fee simple, in possession, free from incumbrances, including compensation for all damage or injury to be sustained by the said A. B. by reason of the severing of the land purchased from the said other lands, or otherwise injuriously affecting such other lands by the exercise of the powers of the [*special Act*]. And we declare this our valuation to be correct.

In witness whereof we have hereunto set our hands this
 —— day of ——, 19——.

Witness to the signature of the said C. D.

Witness to the signature of the said E. F.

Agreement for Sale at a Price to be settled by a Single Arbitrator. Waiver of Objection to Arbitrator.

ARTICLES OF AGREEMENT, made the —— day of ——, Form 5.
 19——, between A. B., of ——, in the county of —— (hereinafter called “the vendor”), of the one part, and the —— Company (hereinafter called “the company”), of the other part.

(1.) By virtue of the powers and subject to the provisions of the [*special Act*] and of the Acts incorporated therewith, the vendor shall sell and convey to the company, for the purposes of the works authorized by the said Act, for the consideration in money to be ascertained as next hereinafter provided, the inheritance in fee simple in possession of and in the piece of land and buildings Premises sold.

Form 5. thereon, situate in the parish of —, in the county of —, containing — or thereabouts, numbered — in the map or plan and book of reference thereto in respect of the said parish of the works authorized by the said Act deposited with the clerk of the peace for the said county, which premises are more particularly described in the schedule hereto, and delineated on the plan attached hereto, and thereon coloured —, with all mines, minerals, timber, rights and interests therein or thereto belonging.

Consideration to be determined by arbitration.

(2.) The consideration in money to be paid by the company to the vendor for the purchase of the fee simple in possession, free from incumbrances, of and in the said land and buildings, and as compensation for all damage, loss, or inconvenience, whether permanent, temporary, or recurring, occasioned by severance or otherwise by the execution of the company's works, shall be determined by the award of C. D., of —, in pursuance of his appointment as a single arbitrator next hereinafter contained, and in which the vendor and the company concur; and the said parties respectively do hereby waive any objection to the said arbitrator by reason of his being a shareholder of the company.

Appointment of arbitrator.

(3.) The vendor and the company, by virtue and in exercise of the provisions of the Lands Clauses Consolidation Act, 1845, and of all other powers and authorities enabling them respectively, hereby nominate, constitute, and appoint the said C. D. to be the single arbitrator, to whom the consideration in money to be paid by the company for the said piece of land and building and for compensation as aforesaid shall be referred, and it is agreed that all the provisions in the Lands Clauses Consolidation Act aforesaid contained, and applicable in that behalf (including the provisions of sect. 34 as to costs), shall extend and apply to, and shall be observed with regard to the arbitration agreed upon by these presents.

Title, payment of costs, and completion.

(4.) The vendor, within — calendar months after he shall have received notice of the decision of the said C. D. on the matters hereby referred to him, shall show to the

satisfaction of the company a title to the said premises, and will, on payment of the amount of the award, execute or procure to be executed proper conveyances thereof to the company, and will, within —— calendar months after he shall have received notice of such award, pay such costs (if any) as he shall thereby be directed to pay. The company shall, within one calendar month of such decision as aforesaid, pay such costs (if any) as they shall be thereby directed to pay.

Form 5.

(5.) This agreement shall not prejudice the company's statutory right of entry on the said premises, and for the purpose of such entry the sum of £—— shall be taken to be the amount claimed by the vendor for purchase money and compensation in respect of the said premises.

[*Add Clause 12 from Form 1.*]

In witness, &c.

Receipt for Compensation (Short Form).

[*Title of undertaking.*]

I, A. B., do hereby acknowledge that I have received the sum of £—— in full for all claims and demands for purchase money and compensation, costs, charges, and expenses against the —— Company, in respect of my estate or interest in the premises known as ——, in the county of ——, by reason of the exercise of the powers of the [*special Act*], and the construction of the works thereby authorized.

Form 6.

Dated this —— day of ——, 19—.

(Signed) ——.

Receipt for Compensation.

[*Title of undertaking.*]

RECEIVED THIS —— day of ——, 19—, of the —— Company, the sum of —— pounds, for the purchase, free

Form 7.

Form 7. from all incumbrances, of all the term, estate and interest of me the undersigned in the premises hereinafter described, and as compensation for all consequential and other damage and injury sustained or to be sustained by reason of the company taking or using the said premises under the powers and for the purposes of the [*special Act*]. And I undertake, at the request and cost of the company, at any time on being required by them, to execute an assignment to them or as they may direct of the said premises for all my term, estate and interest therein, subject to the rent and conditions on which I hold the same, and I also undertake to give the company possession of the said premises.

No. on Plan deposited for the Parish of	Description and Situation of the Property.	Term or Interest.	Special Stipulations and Conditions, if any.

Purchase money and compensation £——.
(Signed) ——.

Agreement for Payment by Instalments in a Case of Defective Title.

Form 8. MEMORANDUM OF AGREEMENT, made this —— day of ——, 19—, between A. B., of ——, of the one part, and the —— Company (hereinafter called “the company”), of the other part. Whereby it is agreed as follows:—
(1.) The said A. B., in consideration of £—— paid to him by the company on the signing hereof, and of the further payments hereafter agreed to be made by the company, doth hereby agree to assign, and doth hereby assign to the company, with immediate possession thereof, all

his estate and interest (being the residue of a term which will expire on the —, 19—) of and in the hereditaments Form 8.
[describe the premises as in Form 1].

(2.) The company shall during the residue of the said term, so long as they shall continue in undisturbed possession of the said premises, pay to the said A. B., his executors, administrators, or assigns, the sum of £— on the — day of — in every year, beginning with the year 19— and ending with the year 19—, being the last year of the residue of the said term, such sum, however, not to be apportionable in the event of the company ceasing to have possession between two of the said days of payment.

In witness, &c.

—————

Agreement for Sale of Land for a Railway and (in severed pieces) for Piers of Arches.

MEMORANDUM OF AGREEMENT, made this — day of —, 19—, between A. B., of — (hereinafter called “the vendor”), of the one part, and C. D., of —, in the county of —, as agent for and on behalf of the — Company (hereinafter called “the company”), of the other part. Form 9.

(1.) By virtue of the powers and subject to the provisions of the [*special Act*], and of the Acts incorporated therewith, the vendor agrees to sell (notwithstanding anything to the contrary in the said Acts contained), and the company agree to purchase, for the sum of £—, the inheritance in fee simple of and in all those pieces or parcels of land, containing by admeasurement — or thereabouts, situate in the parish of —, in the county of —, more particularly described in the Schedule hereto, and delineated on the plan attached hereto, and therein coloured red [*lands purchased entire*] and green [*severed*]

Purchase of land
 (1) entire for railway, and
 (2) in small plots for piers of arches.

Form 9. *plots purchased for piers of arches*], together with all rights and interests in the said several pieces and parcels of land (except mines and minerals, and tenants' interest), free from incumbrances, except tithes and land tax (if any), for the purposes of the [*undertaking*] and the works connected therewith, such sum to include full compensation for the value thereof, and for all damage sustained by the vendor by reason of the severing of the property purchased from the vendor's other property by the exercise of the powers of the said Acts, and also for the right of pre-emption of the said lands and premises, or any part thereof, in the event of the same becoming superfluous land, and to be in full satisfaction for all bridges or ways (if any), either over, under, or across the said railway, except such as are hereby specially provided for.

Liberty to
build
beyond
piers.

(2.) The vendor, for the consideration aforesaid, further agrees to grant, and the company to purchase, full right and liberty for themselves and any persons authorized by them to construct the necessary arches and upper portion of their railway works over the land remaining the property of the vendor, lying between the said pieces of land coloured green on the said plan, and to maintain the same in good condition and repair, and with liberty so to construct and maintain the said arches and upper portions of the railway works aforesaid, that the same may project beyond the limits of the said pieces of land coloured green over the land remaining the property of the vendor, his heirs and assigns, to any extent not exceeding — feet on each side thereof; And also full right and liberty to maintain the footing of each pier when constructed; And also full and free liberty and power for the company at all reasonable times, with surveyors, workmen, horses, carts, and waggon, to enter into and upon so much and such part or parts of the residue of the lands belonging to the said vendor as adjoin the said pieces of land coloured green on the said plan as may be requisite or necessary for the purpose of constructing, and from time to time maintain-

Form 9.

ing and repairing, the said arches and the works connected therewith, the company from time to time making full compensation and satisfaction to the vendor for all damage or injury which may be done or occasioned to the said lands other than the pieces of land hereby agreed to be purchased, or any erections, buildings, or other property or works for the time being standing or being thereon, by or by reason, or in consequence, of the exercise of the liberty, power, or authority hereby agreed to be granted, or any of them, except that the company shall not pay any compensation by reason of the first construction of the said railway. And also the full and free right, liberty, and power to construct, maintain, and use a bridge for the purpose of carrying their railway over the occupation road, No. — on the said plan, and for the purposes last aforesaid, as well as that hereinafter mentioned, full and free right, liberty, and power for the company, at all reasonable times, with servants, workmen, horses, carts, waggons, and other vehicles, to enter into and upon so much of the said occupation road as is distinguished by a — colour on the said plan, and to lower the level thereof so as to give a clear headway for their bridge of not less than — feet. Provided, nevertheless, that in so doing they shall not make the said road in any part of steeper inclination than — on the south side of the railway, and — on the north side thereof.

(3.) The vendor hereby undertakes, within — days Abstract. from the date hereof, at the expense of the company, to deliver to their solicitor an abstract of title of the said premises hereby sold, and produce the deeds and muniments of title and other evidences in proof of the same, but to such extent as the solicitor of the company shall require, and not further, and the vendor and all other necessary parties shall and will make and execute all proper and necessary conveyances to the company as they shall require of the said lands and premises, with acknowledgments of the right to production, and undertakings

Form 9. for safe custody, of deeds or other muniments of title not handed over to them, according to the usual practice on purchase of land.

Comple-
tion.

(4.) The said purchase shall be completed, and the said purchase and compensation money shall be paid to the vendor, or as provided by the said Acts, on or before the — day of — next, on which day the company shall be entitled to possession of the estate of the vendor in the said land; but if from any cause the purchase shall not be completed, nor the purchase and compensation money paid on that day, then the company shall pay interest for the same at the rate of £—— per centum per annum from that day to the day of payment: Provided, nevertheless, that the company shall be at liberty to take possession at any time hereafter of the estate of the vendor in the said lands, and in that case they shall pay to the vendor interest at the rate of £—— per centum per annum on such purchase and compensation money from the time of their taking possession until payment thereof; and the company shall, if required by the vendor, before taking possession of the said lands, deposit the amount of purchase and compensation money at the Bank of —, in the joint names of the vendor and the secretary for the time being of the company.

Land tax,
&c.

(5.) The land tax and rent charge in lieu of tithes (if any) shall, at the expense of the company, be apportioned between the land sold to the company and the remainder of the estate of the vendor charged therewith.

Costs.

(6.) The company shall pay to the vendor the sum of £—— for the expenses of and incident to the negotiation of the said purchase and completing this agreement, in addition to such costs as he shall be entitled to under the provisions of the Lands Clauses Consolidation Act, 1845.

As witness, &c.

Form 10. mines are more particularly delineated and shown on the plan hereto annexed and thereon coloured —.

Title. (2.) [*Insert clause as to evidence of title and conveyance, see Clause 5 of Form 1.*]

Completion. (3.) The purchase shall be completed, and the purchase money paid on the — day of —, 19—, and any purchase money then unpaid shall bear interest at four per cent. per annum from that day until paid.

No easement for working mines over adjoining property. (4.) The company shall not have any right or easement, whether for the purpose of working the said mines or otherwise, over the surface of the adjoining property of the vendor.

Costs. (5.) The said purchase money shall include the costs of the surveyor of the vendor; but the said company shall pay the whole of the costs of the vendor's solicitors of and incidental to this sale and this agreement, and the title and conveyance in pursuance thereof [*or insert Clause 12 from Form 1*].

In witness, &c.

*Agreement for Sale of Freehold and Leasehold Interest
in Mines.*

Form 11. MEMORANDUM OF AGREEMENT, made the — day of —, 19—, between A. B., of —, of the first part, C. D., of —, of the second part, and the — Company (hereinafter called "the company"), by E. F., of —, their agent, of the third part. Whereas the said A. B. is entitled to the freehold in fee simple of and in the mines and minerals hereinafter described, and intended to be hereby conveyed, subject to a lease thereof, to the said C. D., for the term of — years from the — day of —, 19—. And whereas the said C. D. is now entitled to the

said mines and minerals for the unexpired residue of the said term. Now it is hereby agreed as follows:— Form 11.

(1.) The said A. B. & C. D. (hereinafter called “the vendors”) agree to sell to the company and the company agree to purchase at the price of £—— for the reversionary freehold interest, and £—— for the said leasehold interest, and upon the conditions hereinafter contained, the freehold in fee simple in possession of and in all those mines, veins, strata, and seams called or known by the names of ——, lying and being in and under the lands situate at ——, more particularly described in the schedule hereto, and coloured —— in the plan endorsed hereon. Mines
sold, and
price.

(2.) [*Insert clause providing for evidence of title.*] Title.

(3.) The purchase shall be completed and the purchase money paid on the —— day of ——, 19—, and any purchase money then unpaid shall bear interest at four per cent. per annum from that day until paid. Comple-
tion.

(4.) On payment of the purchase money together with any interest which may be due thereon as aforesaid, the vendors and all other necessary parties shall execute all proper conveyances of the said mines to the company. Convey-
ance.

(5.) The vendors shall be entitled to retain all deeds which do not exclusively relate to the mines and minerals hereby agreed to be sold, but shall give the usual acknowledgment and undertaking for production and safe custody. Retention
of deeds.

(6.) The company shall pay the vendors’ costs of their solicitor of preparing this agreement, and of and incident to the investigation of the title and execution of the conveyances in pursuance therefore, and also a fee of £—— for their surveyor. Costs.

As witness, &c.

[THE SCHEDULE above referred to.]

Agreement for Easement. Light and Air.

Form 12. MEMORANDUM OF AGREEMENT, made this — day of —, 19—, between the — Company (hereinafter called “the company”), of the one part, and A. B. of —, of the other part. Whereby it is agreed as follows:

(1.) The company will permit the said A. B. to enjoy, without obstruction, the light and air appurtenant to the premises of the said company, at the [*specify windows, &c.*], now opened in the wall of the — of the said A. B., which said [*windows, &c.*] overlook the — of the said company, and are shown on the plan hereunto annexed, and thereon coloured —.

(2.) So long as the said A. B. continues to enjoy the permission aforesaid, he will pay to the company, their successors and assigns, the sum of —, on the — day of — in every year, the first payment to be made on the — day of —, 19—.

(3.) The company, their successors or assigns, shall at any time hereafter be at liberty to withdraw the said permission to enjoy the light and air at the premises aforesaid, giving — months’ notice, in writing, to the said A. B., his heirs or assigns, and on the expiration thereof the said privilege shall absolutely cease and determine, and the company shall be reinstated in all their former rights in respect thereof.

In witness, &c.

Lease of Land for Purpose of obtaining Ballast.

Form 13. THIS INDENTURE, made the — day of —, 19—, between A. B. (hereinafter called “the lessor,” which expression, where the context so admits, shall include his heirs and assigns), of the one part, and the — Company (hereinafter called the “company,” which expression,

where the context so admits, shall include their successors and assigns), of the other part: Whereas the lessor is seised of or entitled to the lands and hereditaments hereinafter described; And whereas the company, being desirous of acquiring possession of the said lands for the purpose of obtaining ballast and sand and gravel out of the same for the purposes of their undertaking, have contracted and agreed with the lessor for a lease of the said lands for the term of — years, commencing from the — day of —, 19—, at and under the yearly rents and other payments, covenants, provisions, stipulations, and agreements hereinafter reserved and contained concerning the same. Now This Indenture Witnesseth that, in consideration of the yearly rents and other payments, covenants, and agreements hereinafter reserved and contained, and on the part of the company to be paid, performed, and observed, the lessor doth hereby demise unto the company all that piece or parcel of land situate, lying, and being in the parish of —, in the county of —, containing by admeasurement — A. — R. — P. or thereabouts, and more particularly delineated on the plan thereof drawn on the margin of these presents, and therein coloured —, with full power and authority to and for the company, and their successors, agents, and servants, at all times during this demise, to dig to any depth for, and to get, take, and carry away, ballast and sand and gravel from the said land hereby demised, for their own use and benefit, except and reserving unto the lessor (subject to the provisions of the Ground Game Act, 1880), all game and rabbits, and the right of shooting and sporting in and over the land and hereditaments hereby demised; To hold the said premises hereby demised unto the company from the — day of —, 19—, for the term of — years, paying therefor the sum of £—, in four instalments, as follows, namely, the 1st instalment of £— on the execution of these presents, on payment whereof the company shall be entitled to fence off, in manner herein-

Form 13.

Description of lands.

Power to get ballast.

Term.

Premium.

Form 13.	after mentioned, ——— acres of the said land; the 2nd and 3rd instalments respectively of £—— whenever the company shall have fenced off, as aforesaid, further portion of ——— and ——— acres of the said land; and the final instalment of £—— whenever the company shall have fenced off, as aforesaid, the remaining portion of the said land.
Cove- nants.	And also paying the rents hereinafter mentioned; And the company do hereby for themselves, their successors, and assigns, covenant with the lessor in manner following, that is to say, that they, the company, their successors or assigns, will pay the said sums of £——, £——, £——, and £——, on the days and times and in manner hereinbefore mentioned; And also will cause the whole of the surface soil as it is removed in order to obtain the said ballast, sand and gravel from the said land, to be preserved, and at their expense cause the same to be replaced on the top and uniformly laid over the land which shall have been excavated by the company.
To pay instal- ments of premium.	
To pre- serve the surface soil.	
And relay.	And also will make good and level the said land progressively and as fast as the removal of the ballast, sand and gravel therefrom will admit, the slopes on all sides to be dressed down to an inclination of not less than ——— inches in ———, and properly soiled over; And will pay a rent of £—— per acre per annum, and so in proportion for any quantity less than one acre on the ——— day of ——— yearly during this demise, for all the land occupied or used by them, the lessor paying all rates and taxes for the said land, the said rent to be payable as to any part of the land from the time when such part is occupied or used by the company, and to continue to be payable until the land is re-occupied by the lessor or till the termination of the said term which ever shall first happen; And will from time to time properly and safely fence off with posts and rails the land taken by the company; And that the lessor shall be at liberty to occupy and cultivate the remainder of the said land hereby demised which shall from time to time be unoccupied by the company, whether before ex-
To pay acreage rent.	
To fence.	
Power for lessor to remain in occupa- tion.	

cavation or after excavation and levelling as aforesaid, without payment of rent or any compensation to the company for the same; And that if any such lands shall be required and taken by the company when under cropping they will also pay to the lessor fair and reasonable tenant's compensation for the cropping injured or destroyed; And also that the company will at all times during the continuance of the term hereby granted make and maintain a good practical drift road for driving cattle of the lessor over the said land to the present occupation road, or as near thereto as may be practicable. And also that the company will, at the expiration of the term hereby granted, or other sooner determination thereof, peaceably and quietly yield up unto the lessor the said lands hereby demised so properly levelled, fenced, and in order, as aforesaid, the company being hereby expressly exempted from all responsibility for the damage to the said land. Provided always, and it is hereby agreed and declared, that if before the expiration of the said term the whole of the ballast, sand and gravel under the said land shall have been gotten, it shall be lawful for the company having paid the rents and sums hereby reserved and made payable, and performed and observed the several covenants and agreements herein contained up to the time of the surrender, to surrender the premises hereby demised unto the lessor, and such surrender shall be forthwith accepted by the lessor. And it is hereby further agreed and declared, that if in the opinion of the lessor or his agent, it shall be doubtful whether the company are entitled under the provision hereinbefore contained to surrender the premises, it shall be lawful for the lessor by notice in writing delivered to the company to require them to prove, at their own expense and by proper evidence, to the reasonable satisfaction of the lessor, that the state of circumstances under which they claim to surrender the premises actually exists; and the premises shall not be surrendered until such evidence shall have been given, or if the company

Form 13.

Compensation for crops.

Drift road for cattle.

To yield up at end of term.

Power to surrender term when ballast exhausted.

Proof that ballast exhausted.

Form 18. shall require the question to be referred to arbitration, under the provision in that behalf hereinafter contained, until the arbitrators or their umpire, as the case may be, shall have made their award. And the lessor doth hereby covenant with the company, that the company paying the sums of money hereby made payable, and the said rents hereby reserved at the times hereinbefore appointed for payment thereof, and observing the covenants, conditions, and agreements hereinbefore reserved and contained, and on their part to be paid, observed, and performed, shall peaceably and quietly hold and enjoy the hereby demised premises, together with the powers and authorities hereinbefore reserved, subject as aforesaid, for the term hereby granted and for the purposes aforesaid, without any interruption from the lessor, or by or from any person or persons whomsoever, claiming under or in trust for him. Provided also, and it is hereby lastly agreed and declared, that if any doubt, difference, or dispute shall hereafter arise between the parties hereto touching these presents or the construction hereof, or any clause or thing herein contained, or any other matter in any wise relating to these presents, or the rights, duties, or liabilities of either party in connection therewith, the matter in difference shall be referred to two arbitrators, one to be appointed by each party, and such reference shall be deemed to be a submission to arbitration within the Arbitration Act, 1889, or any subsisting statutory modification thereof.

Covenant
for quiet
enjoy-
ment.

Arbitra-
tion
clause.

In witness, &c.

(II.) COMPULSORY TAKING OF LANDS.

*Certificate of Justices of Subscription of Capital
under Sect. 17.*

WE, the undersigned A. B. & C. D., being two of Her Majesty's justices for the county of —, assembled and acting together at —, hereby, in pursuance of sect. 17 of the Lands Clauses Consolidation Act, 1845, certify, on the application of the — Company, that the sum of £—, being the amount of the capital of the said Company prescribed by [*special Act*], whereby the undertaking of the said company is authorized, has been subscribed under contract binding the parties thereto, their heirs, executors, and administrators, for the payment of the several sums by them respectively subscribed. Form 14.

Given under our hands this — day of — 19—.

(Signed) A. B.
C. D.

Notice to Treat.

[*Special Act.*]

(1.) The — Company, incorporated by Act of Parliament passed in the session holden in the — and — years of the reign of Her present Majesty, Queen Victoria, intituled [*title of Act incorporating the company*], do hereby give you notice that they require to purchase and take, Form 15.

Form 15. under the powers of [*insert short title of special Act under which the lands are taken*], and of the Acts incorporated therewith, so much of the land and hereditaments numbered — in the map or plan and book of reference thereto in respect of the parish of —, in the county of —, of the works authorized by the said [*special Act*], deposited with the clerk of the peace for the said county, as is described in the schedule hereto and delineated in the plan annexed hereto and therein coloured —, and which said land and hereditaments the company are by the said [*special Act*] authorized to purchase and take.

(2.) And the said company further give you notice that they are willing to treat with you and every of you for the purchase of the lands and hereditaments so required as aforesaid, and as to the compensation to be made to you and every of you for the damage that may be sustained by you and every of you by reason of the execution of the works authorized by the secondly mentioned Act.

(3.) And the said company do hereby demand from you, and each and every of you, the particulars of your respective estates and interests in the lands and hereditaments so required as aforesaid, together with all charges and interests to which the same are subject, and of the claims made by you and each of you in respect thereof.

(4.) And the said company do hereby further give you notice that if for twenty-one days after the service hereof you shall fail to state the particulars of your respective claims in respect of the lands and hereditaments so required as aforesaid, or to treat with the said company in respect thereof, or if you or any of you respectively and the said company shall not agree as to the amount of compensation to be paid by the said company for or in respect of your respective interests in the premises so required, or the interests therein which you respectively are by the said secondly mentioned Act, or the Acts incorporated therewith, enabled to sell, or for any damage that may be sustained by you respectively by reason of the execution

of the works authorized by the said secondly mentioned Form 15.
Act, the said company will forthwith proceed to require
the amount of such compensation to be settled in manner
directed by the Lands Clauses Consolidation Act, 1845,
for settling cases of disputed compensation.

(5.) And the said company, in case you, having a greater
interest therein than as tenant at will, claim compensation
in respect of any unexpired term or interest under any
lease or grant of the lands or hereditaments so required as
aforesaid, do hereby require you to produce the lease or
grant in respect of which such claim is made, or the best
evidence thereof in your power.

Dated this — day of — 19—.

To —
—
and to all persons having or claiming any
estate or interest in the said lands and
hereditaments. }

(Signed) —,
Secretary of the said company.

THE SCHEDULE above referred to.

Parish or Place and County in which the Lands and Heredita- ments are situate.	No. on Map or Plan, and in Book of Refer- ence for such Parish deposited with the Clerk of the Peace for the County of —.	Description of Property.

Notice of Claim, and of Desire to have Amount of Compensation determined by Arbitration (or by a Jury).

To the — Company.

Form 16.

WHEREAS by a certain notice in writing, dated the — day of —, 19—, under the hand of —, the secretary of the said company, I, the undersigned —, of —, in the county of —, was informed that you the said company require to [*here recite notice to treat*].

Now, in pursuance of the requisition in your said recited notice contained, I hereby inform you the said company that I am seised of an estate of inheritance in fee simple of and in the said lands and hereditaments in the said notice to treat and the schedule thereto described, and required to be purchased and taken by you, subject to [*here describe any ground rents or incumbrances ; or, if the tenure be leasehold, specify the duration of the term, with the date of the lease, and the rent payable, &c.*].

And I hereby give you further notice that I claim as compensation for my estate and interest in the said lands and hereditaments, and for the damage which will be sustained by me by reason of the execution of the works authorized by the said [*short title of special Act*], the sum of £—.

And I hereby give you further notice that unless you agree to pay the sum above claimed, it is my desire that the amount to be paid to me in respect of the above claim shall be determined by arbitration in the manner prescribed by the Lands Clauses Consolidation Act, 1845 [*or shall be settled by a jury, according to the provisions contained in the Lands Clauses Consolidation Act, 1845*].

Witness my hand this — day of —, 19—.

(Signed) —.

—

*Withdrawal of Notice to Treat and Substitution of
Fresh Notice.*

[*Special Act.*]

WHEREAS by an instrument in writing under the hand Form 17.
of the undersigned —, the secretary of the — Company (hereinafter called “the company”), dated the — day of —, '19—, the company gave you, the under-mentioned A. B., notice that they required to purchase and take under the powers of the [*special Act*] and of the Acts incorporated therewith, certain land, ground, and hereditaments, situate in the parish of —, in the county of —, which were described in the schedule thereto and delineated on the plan attached thereto, and thereon coloured —, and that the company were willing to treat with you for the purchase of the lands and hereditaments so required as aforesaid, and as to the compensation to be made to you for the damage that might be sustained by you by reason of the execution of the works authorized by the above first-mentioned Act. And whereas the said notice was served upon you, the said A. B., on the — day of —, 19—. And whereas the company have been advised that they have no power to purchase, and that you, the said A. B., have no power to sell certain portions of the lands and hereditaments comprised in such notice of the — day of —, 19—. Now, therefore, the company hereby give you notice that they hereby withdraw the said last-mentioned notice, and substitute the accompanying notice in its stead.

Dated this — day of —, 19—.

To —.

(*Signed*) —,

Secretary of the said company.

*Notice to Treat for Easement.*Form 18.

The —— Company.

(1.) The —— Company, incorporated by an Act of Parliament passed in the session holden in the —— years of the reign of her present Majesty Queen Victoria, intituled [*title of Act incorporating the Company*], do hereby give you notice that they require to purchase and take under the powers of [*special Act authorizing taking of easement*], and of the Acts incorporated therewith, certain easements or rights specified in the first schedule hereto of using so much of the land and hereditaments numbered —— on the map or plan and book of reference thereto, in respect of the parish of ——, in the county of ——, of the works authorized by the said [*special Act*] deposited with the clerk of the peace for the said county as is described in the second schedule hereto and delineated in the plan annexed hereto and thereon coloured ——, and which easements or rights the company are by the said [*special Act*] authorized to purchase and take.

(2.) And the said company do hereby further give you notice that they are willing to treat with you and every of you for the purchase of the said easements or rights of using the land and hereditaments aforesaid, and as to the compensation to be made to you and every of you for the damage that may be sustained by you and every of you by reason of the execution of the works authorized by the said Act.

(3.) And the said company do hereby demand from you and each and every of you the particulars of your respective estates and interests in the lands and hereditaments over which such easements and rights of user are so required as aforesaid, together with all charges and interests to which the same are subject, and of the claims made by you and each of you in respect thereof.

(4.) And the said company do hereby further give you notice that if for twenty-one days after the service hereof

you shall fail to state the particulars of your respective claims in respect of the said lands and hereditaments, or to treat with the said company in respect of the said easements or rights, or if you or any of you respectively and the said company shall not agree as to the amount of compensation to be paid by the said company for or in respect of your respective interests in the premises so required, or the interest therein which you respectively are by the said secondly mentioned Act, or the Acts incorporated therewith, enabled to sell, or for any damage that may be sustained by you respectively, by reason of the execution of the works authorized by the said secondly mentioned Act, the said company will forthwith proceed to require the amount of such compensation to be settled in manner directed by the Lands Clauses Consolidation Act, 1845, for settling cases of disputed compensation.

Dated this — day of —, 19—.

To —

and to all persons having or claiming
any estate or interest in the said lands
and hereditaments.

(Signed) —,

Secretary to the said company.

THE FIRST SCHEDULE above referred to.

[Describe the easements or rights which are required.]

THE SECOND SCHEDULE above referred to.

Parish or Place and County in which the Lands and Hereditaments required are situate.	No. on Map or Plan and in Book of Reference for such Parish deposited with the Clerk of the Peace for the County of —.	Description of Property.

*Notice of Intention to apply to Justices to correct
Mistake in Plan.*

Form 19.

Sir,

The —— Company, in pursuance of the powers of the [*special Act*], and of the Railways Clauses Consolidation Act, 1845, do hereby give you notice that it is their intention, after the expiration of —— * days from the service of this notice upon you, on ——, the —— day of —— inst., at —— o'clock in the forenoon, to apply to two justices of the peace for the county of ——, sitting at the ——, in the borough of ——, being a petty sessional court for the division of ——, in the said county of ——, in which division the parish of —— hereinafter mentioned is situate, for the correction of so much of the plan of the works authorized by the said [*special Act*] and book of reference thereto (by such Act stated to have been deposited with the clerk of the peace for the county of ——) as relates to the lands numbered —— on such plan, and in such book of reference, and erroneously described therein as being in the parish of ——, in the said county, and as belonging to ——, and his trustees —— and ——, as owners or reputed owners thereof; but which lands are in fact situate in the parish of ——, in the same county, and belong to you as owner or reputed owner of the freehold in fee thereof. And further the said company will, after the expiration of such —— days as aforesaid, apply to such two justices to certify that the said lands have been erroneously described as aforesaid, and that their certificate may be deposited with the clerk of the peace for the said county, and with the clerk of the parish in which such lands are situate, along with the other documents to which they relate, to the intent that such plan and book of

* The notice must not be less than a ten days' notice.

reference may be deemed to be corrected as provided by Form-19.
the Railways Clauses Consolidation Act, 1845.

Dated this — day of —, 19—.

(Signed) —,
Secretary to the [company].

To —.

*Notice to Treat after Correction of Deposited Plan
and Book of Reference.*

WHEREAS, by an Act of Parliament passed in the Form 20.
session holden in the — and — years of the
reign of her present Majesty Queen Victoria, intituled
[*special Act*], the — Company were authorized to pur-
chase and take for the purposes of their undertaking the
lands and hereditaments described in the schedule hereto
and delineated on the plan annexed hereto and thereon
coloured —. And whereas on the plan of the said under-
taking and in the book of reference thereto deposited with
the clerk of the county of —, the said hereditaments
and premises (being numbered — on such plan and in
such book of reference) were erroneously described as
being in the parish of — in the said county and as
belonging to — and his trustees — and — as
owners or reputed owners thereof. And whereas such
lands are, in fact, situate in the parish of — in the same
county and belong to you as owner or reputed owner of
the freehold in fee thereof. And whereas by a certificate
dated the — day of —, 19—, duly made under the
provisions of the Railways Clauses Consolidation Act, 1845,
by two justices of the peace for the county of —, sitting
at — in the said county (a copy of which has been
lodged with the clerk of the peace of the said county
of — and also with the clerk of the said parish of —),
it was certified that the said hereditaments and premises

Form 20. were erroneously described as aforesaid in the said deposited plan and book of reference thereto and that they were, in fact, situate in the said parish of — and that they belonged to you as owner thereof, and they the said justices further certified that such misstatement or erroneous description arose from mistake.

Now I, A. B., of —, acting on behalf of the said company, do hereby give you notice that the said company require to purchase and take, under the powers of the [*special Act*] and the Acts incorporated therewith, All the said hereditaments and premises described in the schedule hereto and coloured — on the plan annexed hereto (which is a copy of the plan annexed to the said certificate).

And I further give you notice that the said company are willing to treat with you for the purchase of the lands and hereditaments so required as aforesaid, and as to the compensation to be made to you for the damage that may be sustained by you by reason of the execution of the works authorized by the said [*special Act*].

And the said company do hereby demand from you the particulars of your estate and interest in the lands and hereditaments so required as aforesaid, together with all charges and interests to which the same is subject and of the claims made by you in respect thereof.

And the said company do hereby further give you notice, that if for twenty-one days after the service hereof you shall fail to state the particulars of your claim in respect of the lands and hereditaments so required as aforesaid, or to treat with the said company in respect thereof, or if you and the said company shall not agree as to the amount of compensation to be paid by the said company for or in respect of your interest in the premises so required or the interest therein, which you are, by the said secondly mentioned Act, or the Acts incorporated therewith, enabled to sell, or for any damage that may be sustained by you by reason of the execution of the works

authorized by the said secondly mentioned Act, the said Form 20.
company will forthwith proceed to require the amount of
such compensation to be settled in manner directed by
the Lands Clauses Consolidation Act, 1845, for settling
cases of disputed compensation.

Dated this — day of —, 19—.

(Signed) —,
Secretary of the above-mentioned company.

To —.

THE SCHEDULE above referred to.

Parish or Place and County in which the Lands and Heredi- taments required are situate.	No. on Map or Plan and in Book of Refer- ence deposited with the Clerk of the Peace for the County of —.	Description of Property.

*Notice to Treat for severed Portion of less Value than
Cost of making Communication.*

[*Special Act.*]

WHEREAS the — Company, incorporated by an Act Form 21.
of Parliament passed in the session holden in the —
years of the reign of her present Majesty Queen Victoria,
intituled [*title of Act incorporating company*], did by a certain
instrument under the hand of their secretary, the service
whereof was accepted by you, give you notice that they
required to purchase and take under the provisions of the
[*special Act authorizing taking of lands*], and of the Acts
incorporated therewith, certain lands and hereditaments,

Form 21. described in the schedule thereto and delineated on the plan attached thereto and thereon coloured —, and that the said company were willing to treat with you for the purchase of the said premises and as to the compensation to be made to you by virtue of the said Acts. And the said company did thereby demand from you the particulars of your estate and interest in the lands and hereditaments so required as aforesaid, and of the claims made by you and each of you in respect thereof. And whereas by your schedule of claim duly delivered to the said company you state that your lands will be so cut through and divided by the works of the company upon the said premises as to leave on the — side of the said premises a piece of land belonging to you of less extent than half a statute acre, and that you have no other lands adjoining such last-mentioned piece of land; and by the said schedule of claim you require the said company to make a bridge [*state nature of bridge as specified in claim*] connecting the said severed piece of land with your land on the other side of the lands and hereditaments required to be taken as aforesaid. And whereas the piece of land so severed as aforesaid is estimated by the said company to be of less value than the expense of making the said bridge. Now, therefore, the said — Company do hereby give you notice that they require to purchase and take under the powers of the Lands Clauses Consolidation Act, 1845, with which the [*special Act*] is incorporated, the land and hereditaments situate in the parish of —, in the county of —, described in the schedule hereto and delineated on the plan attached hereto and thereon coloured —, which piece of land and hereditaments form the severed land mentioned in your schedule of claim hereinbefore mentioned.

And the company give you further notice that they are willing to treat with you for the purchase of the land and hereditaments so required as aforesaid, and as to the compensation to be made to you for the damage that may be sustained by you by reason of the execution of the works authorized by the said [*special Act*].

And the said company do hereby demand from you the particulars of your estate and interest in the lands and hereditaments so required as aforesaid, together with all charges and interests to which the same is subject, and of the claims made by you in respect thereof. Form 21.

And the said company do hereby further give you notice that if for twenty-one days after the service hereof you fail to state the particulars of your claim in respect of the land and hereditaments so required as aforesaid, or to treat with the said company in respect thereof, or if you and the said company shall not agree as to the amount of compensation to be paid by the said company for or in respect of your interest in the premises so required, or the interest therein, which you are, by the said secondly mentioned Act or the Acts incorporated therewith, enabled to sell, or for any damage that may be sustained by you by reason of the execution of the works authorized by the said secondly mentioned Act, the said company will forthwith proceed to require the amount of such compensation to be settled in manner directed by the Lands Clauses Consolidation Act, 1845, for settling cases of disputed compensation.

Dated this — day of —, 19—.

To —

(Signed) —,
Secretary to the said company.

THE SCHEDULE above referred to.

Parish or Place and County in which the Lands and Hereditaments required are situate.	No. on Map or Plan and in Book of Reference for such Parish deposited with the Clerk of the Peace for the County of —.	Description of the Lands and Hereditaments required.

*Counter-notice to Company, under Sect. 92, to
take whole of Premises.*

Form 22. To the —— Company.

I, the undersigned A. B., of ——, in pursuance of the provisions of sect. 92 of the Lands Clauses Consolidation Act, 1845, do hereby give notice that the land, buildings, and premises mentioned and comprised in the notice to treat, dated the —— day of ——, 19—, which has been served by you upon me, are part only of the house [*or other building or manufactory*] known as ——, delineated on the plan attached hereto and thereon coloured ——, of which I am the owner in fee simple, and I further give you notice that I am willing and able to sell and convey to you the whole of the said premises of which I am such owner, and I require you to purchase and take the whole of the said premises.

Witness my hand this —— day of ——, 19—.

(Signed) ——.

Assent to Counter-notice.

Form 23. To ——.

Referring to the notice to treat dated the —— day of ——, 19—, given to you by A. B., on behalf of the —— Company, and to your counter-notice dated the —— day of ——, 19—, we beg to state that the company assent to such counter-notice.

(Signed) A. B. } Directors of the
C. D. } —— Rail. Co.

*Withdrawal of Notice to Treat as to Part of Lands
after Counter-notice under Sect. 92.*

Form 24. WHEREAS I, A. B., on behalf of the —— Company, did by an instrument in writing, dated the —— day of

—, 19—, and served upon you, the under-mentioned Form 24.
C. D., of —, on the — day of the same month, give
you notice that the said company required to purchase and
take, under the powers of the [*special Act*], and of the
other Acts therein referred to, so much of the land or
grounds and hereditaments as were distinguished by a
— colour on the plan attached thereto, and were de-
scribed or referred to in the schedule thereto annexed.
And whereas you, the said C. D., did by another instru-
ment in writing, dated the — day of —, 19—, give
the said company notice with respect to the hereditaments
and premises known as —, and of which you claim to
be the owner, a portion of which said hereditaments and
premises was included in the lastly hereinbefore recited
notice, that you, the said C. D., would not sell or part
with the said portion or any portion of the said heredita-
ments and premises, unless the said — Company would
purchase and take from you the whole of the said here-
ditaments and premises. Now I, A. B., on such behalf as
aforesaid, do hereby give you notice that the said company
will not purchase or take the whole of the said heredita-
ments and premises required by you to be purchased and
taken in and by your said recited notice of the — day
of —, 19—. And I further give you notice that the
said company do hereby withdraw and abandon the here-
inbefore recited instrument in writing or notice to you, of
the — day of —, 19—. [*If it is desired to go on with
the purchase as regards part of the property comprised in the
notice to treat, continue, and substitute the accompanying
notice in its stead.*]

Dated this — day of —, 19—.

(Signed) A. B.,

Secretary to the said company.

To C. D.

*Notice under Sect. 121 to Yearly Tenant to give up
Possession of Premises.*

Form 25. To [*tenant's name and address*].

You are requested to take notice that the — Company, in pursuance of the [*special Act*], hereby demand from you possession of the premises, No. —, — Street, in the parish of —, in the county of —, which you occupy, having no greater interest therein than as tenant from year to year, and require you to give possession of the said premises within — days from the date hereof. The — Company are willing to pay you any compensation to which you may be entitled under the 121st section of the Lands Clauses Consolidation Act, 1845, and the amount of compensation, in case of difference, will forthwith be determined by two justices, as in the said Lands Clauses Consolidation Act, 1845, provided.

Dated this — day of —, 19—.

[*Signed*] —,

Secretary of the said company.

*Notice under Railways Clauses Act, 1845, s. 32, of
Intention to take Lands for Temporary Purposes
(Roads).*

Form 26.

[*Title of undertaking.*]

Power to
take.

Descrip-
tion of
land.

You are requested to take notice that, under and by virtue of [*special Act*], and the Acts therewith incorporated, the — Company require, and are authorized to enter upon, and accordingly intend to enter upon and take temporary possession for the purpose of making roads, of all the piece or parcel of land, situate in the parish of —, in the county of —, containing by admeasurement —

or thereabouts, and being part of a larger piece of land, numbered — in the plans and book of reference thereto in respect of the said parish of the works authorized by the said Act, deposited at the office of the clerk of the peace for the said county of —, and delineated (as to the piece of land so required) on the plan attached hereto, and therein coloured —, which said piece of land so required as aforesaid belongs, or is reputed to belong, to you or some or one of you, or some or one of you have or has, or claim or claims, some estate, share, interest, or charge in, over, or affecting the same or some part thereof. And it is by the Railways Clauses Consolidation Act, 1845, provided, that in all cases where the company shall take temporary possession of land by virtue of the powers therein, or in the special Act granted, it shall be incumbent on the company, within one month after their entry upon such lands, upon being required so to do, to pay to the occupier of the said lands the value of any crop or dressing that may be thereon, as well as full compensation for any other damage of a temporary nature which he may sustain by reason of their so taking possession of his lands; and shall also from time to time, during their occupation of the said lands, pay half-yearly to such occupier, or to the owner of the lands, as the case may require, a rent to be fixed by two justices, in case the parties differ; and shall also within six months after they shall have ceased to occupy the said lands, and not later than six months after the expiration of the time by the special Act limited for the completion of the works, pay to such owner and occupier, or deposit in the Bank for the benefit of all parties interested, as the case may require, compensation for all permanent or other loss, damage, or injury that may have been sustained by them by reason of the exercise as regards the said lands of the powers therein, or in the special Act granted; and that the amount and application of the compensation payable by the company in any of the cases aforesaid shall be determined in the manner provided by the Lands Clauses

Form 28.

Statement
of protec-
tion given
by
R.C.C.A.
1845.Compensa-
tion.

Form 26. Consolidation Act, 1845, for determining the amount and application of the compensation to be paid for lands taken under the provisions thereof.

Dated this —— day of ——, 19—.

(Signed) ——,

Secretary of the said company.

To ——

and all persons having or claiming
any estate or interest in the said
land.

*Notice under Railways Clauses Act, 1845, s. 32, of
Intention to take Lands for Temporary Purposes.*

Form 27.

[*This is not applicable to roads.*]

—— Railway.

Power to
take.

Descrip-
tion of
land.

You are hereby requested to take notice that under and by virtue of the —— Act, 19— (hereinafter called “the special Act”), and the Acts therewith incorporated, the —— Company are authorized to enter upon and take, and accordingly intend to enter upon and take, temporary possession for the purpose of [*insert shortly the purpose*], of all that piece or parcel of land, situate &c., containing by admeasurement —— or thereabouts, and being parcel of a larger piece of land, numbered —— in the plans and book of reference in respect of the said parish of the said works authorized by the special Act, deposited at the office of the clerk of the peace for the said county of ——, and delineated (as to the piece of land so required) on the plan attached hereto, and thereon coloured ——, which said piece of land so required as aforesaid belongs, or is reputed to belong, to you, or you have or claim some estate, share, interest, or charge in, over, or affecting the same or some

part thereof. And it is by the Railways Clauses Consolidation Act, 1845, provided, that in all cases where the company shall, in the exercise of the powers aforesaid, enter upon any lands for the purpose of making spoil banks or side cuttings thereon, or for obtaining therefrom materials for the construction or repair of the railway, it shall be lawful for the owners or occupiers of such land, or parties having such estates or interests therein as under the provisions in the Lands Clauses Consolidation Act, 1845, mentioned, would enable them to sell or convey lands to the company, and before such owners or occupiers shall have accepted compensation from the company in respect of such temporary occupation, to serve a notice in writing on the company requiring them to purchase the said lands or the estates and interests therein capable of being sold and conveyed by them respectively; and in such notice such owners or occupiers shall set forth the particulars of such their estate or interest in such lands, and the amount of their claim in respect thereof; and the company shall thereupon be bound to purchase the said lands or the estate and interest therein capable of being sold and conveyed by the parties serving such notice. And it is by the said Railways Clauses Consolidation Act, 1845, also provided [*proceed as in preceding form*].

Form 27.
Power to
landowner
to require
company
to purchase.

Dated this — day of —, 19—.

(Signed) —,
Secretary of the said company.

To —
—

and all persons having or claiming
any estate or interest in the said
land.

(III.) INJURIOUSLY AFFECTING LANDS.

Agreement for Compensation for Injuriouslly Affecting Land.

Form 28.

MEMORANDUM OF AGREEMENT made this — day of —, 19—. Between A. B., of —, on behalf of the — Company (hereinafter called “the company”) of the one part and C. D., of —, of the other part. Whereby it is agreed as follows:—

(1.) The company shall pay to the said C. D. the sum of £— as and for all such compensation as the said C. D. as the owner of the house and premises situate, &c. and known, &c., shall be entitled to under the provisions of the [*special Act*] and the Acts incorporated therewith, for the damage, whether present or future, and whether ascertained or foreseen or not, caused to the said house and premises by the execution of the works authorized by the said Acts.

(2.) The said C. D. shall, at the expense of the company, before payment as aforesaid, deduce to the satisfaction of the company’s solicitors a good title to the fee simple of the said premises.

(3.) The said compensation shall be paid on the — day of —; but if from any cause the same shall not then be paid, interest at the rate of — per cent. per annum shall be paid upon the amount of the said compensation from the [*day for completion*] to the day of payment thereof.

As witness, &c.

Receipt for Compensation for Injurious Affecting.

I, A. B., of —, do hereby acknowledge that I have Form 29.
 received the sum of £—, being in full satisfaction for all
 claims and demands against the — company for com-
 pensation for injuriously affecting the premises known as
 —, in the county of —, and held by me for an un-
 expired term of — years from —, by reason of the
 diminution of the light and air appurtenant thereto, and
 the damage and injury caused by the execution of the
 works authorized by the [*special Act*], and the Acts in-
 corporated therewith; and the said sum includes all claim
 to compensation recoverable by me as tenant of the said
 premises, and is also in full for all costs and expenses
 whatsoever.

Dated this — day of —, 19—.

£—.

(Signed) A. B.

Notice of Claim for Injurious Affecting.

To the — Company.

Form 30.

WHEREAS, by the exercise of the [*special Act*] and other
 Acts incorporated therewith, you have injuriously affected
 a certain house and shop, situate and being No. —, in
 —, in the parish of —, in the county of — (formerly
 known as —).

Now I, the undersigned A. B., being possessed of the
 said house and premises for the residue of the term of
 — years from —, granted by an indenture of lease
 dated the — day of —, and made between — and
 me the undersigned —, do hereby, in pursuance of the
 statute in that case made and provided, give you the said
 company notice that I require you to pay me compensation
 in respect of the said house and shop, and my estate and
 interest therein, and that the amount of my claim for com-

Form 30. pensation is £——. And I further give you notice that unless you are willing to pay the amount of such compensation, and enter into a written agreement for that purpose within twenty-one days after the receipt by you of this notice, then I desire that the amount may be settled by arbitration [*or by a jury*] according to the provisions contained in the statutes in such case made and provided. [*If by a jury, add: And if you fail to pay the said sum of £——, or to enter into such written agreement as aforesaid, in that case I do hereby require you within —— days after the receipt by you of this notice to issue your warrant to the sheriff of —— to summon a jury for settling the amount of the said compensation.*]

Witness my hand, this —— day of ——, 19—.

(Signed) A. B.

(IV.) ASSESSMENT OF COMPENSATION.

(i.) Arbitration.

Appointment of Arbitrator by Company.

[*Short title of special Act.*]

Form 81.

IN pursuance of the [*short title of special Act*] and the Acts incorporated therewith, be it remembered that we, the [*name of company*], do by this writing under the hand of the secretary of the said company, appoint [*name and description of arbitrator*], to be our arbitrator to act for us, and on our behalf to settle and determine the purchase money and compensation to be paid by us for and in respect of the purchase by us of the estate and interest which [*name and description of landowner*] has or claims to be entitled to, or by the said Acts is enabled to sell to us, in the lands and hereditaments situate at —, in the parish of —, in the county of —, comprised in a certain notice to treat given by us to the said [*landowner*], and dated the — day of —, 19—, and described and distinguished in the plans and the book of reference thereto deposited with the clerk of the peace of the county of —, by the No. —; and also the compensation to be paid by us in respect of the damage, injury, or loss (if any) which the said [*landowner*] may sustain by reason of the taking of the said lands and hereditaments by the said company, and the execution of the works by the said [*short title of special Act*] or the Acts incorporated there-

Form 31. with authorized, and also as such arbitrator on our part and behalf to do all such other acts as are required by the said Act or any Acts incorporated therewith.

Dated this — day of —, 19—.

(Signed) —,

Secretary of the company.

*Notice by Company of Appointment of Arbitrator
with Request to Landowner to Appoint.*

Form 32. To [*landowner*].

WE [*title of company or corporation*], by this writing under the hand of —, the secretary [*or town clerk*] of the said company [*or borough*], do hereby give you notice that we have by writing under our common seal, bearing date the — day of — 19—, appointed [*name and description of arbitrator*], to be our arbitrator to act for us, and on our behalf to settle and determine the purchase money and compensation to be paid by us for and in respect of the purchase by us of the estate and interest which you the said [*landowner*] have or claim to be entitled to, or by the [*short title of special Act*] or the Acts incorporated therewith are enabled to sell to us in the lands and hereditaments situate in —, in the township of —, in the parish of —, in the county of —, comprised in the notice to treat given by us to you and dated the — day of — 19—. And also the compensation to be paid by us in respect of the damage, injury, or loss (if any) which you the said [*landowner*] may sustain by reason of the taking of the said lands and hereditaments by us and the execution of the works by the said [*short title of special Act*] or the Acts incorporated therewith authorized; and also as such arbitrator to do all such

other acts as are required by the said Act or any Acts Form 32.
incorporated therewith.

And we do hereby request you to appoint an arbitrator
to act for you and on your behalf in the matter aforesaid.

Dated this — day of —, 19—.

(Signed) —,

Secretary to the company.

Notice by Company of Appointment of Arbitrator.

The — Company

and

[landowner].

Form 33.

London, — 19—.

TAKE NOTICE, that I have, on behalf of the above-named
company, this day appointed, in writing under my hand,
—, surveyor, to be the arbitrator on behalf of the said
— Company, for the purpose of settling and deter-
mining the purchase money and compensation to be paid
by the said company for and in respect of certain heredita-
ments and premises belonging to you, situate and being in
the parish of —, in the county of —, and numbered
— on the plan and in the book of reference of the said
company deposited with the clerk of the peace for the
county of —.

(Signed) —,

Secretary to the — Railway Company.

To —.

*Notice by Company of Appointment of Arbitrator
(under Protest) to settle Value of Whole of Premises
included in counter-notice under Section 92.*

Form 34. To —.

THE — Company hereby give you notice that they do not admit that the land and premises referred to in their notice to treat, addressed to you and dated the — day of —, are part of the land and premises mentioned and described in your notice to them of the — day of — instant, or that you are entitled under the Lands Clauses Consolidation Act, 1845, to require the said company to purchase and take the whole of such lands, but, subject to and under protest, they are willing to nominate some person to act as arbitrator on their behalf in the matters aforesaid, as is required of them by you, in order that the amount of compensation which they the said company ought to make in respect of such of the said matters (if any) as may be proved, and as under the said Acts of Parliament, the said company may be liable to make compensation for may be settled, ascertained, and determined. And they further give you notice that they have, by an instrument in writing under the hand of —, their secretary, bearing even date herewith, appointed (but subject to and under protest aforesaid) —, of —, in the county of —, as the arbitrator on their behalf to whom the matters mentioned in the notice under your hand, dated the — day of —, 19—, are to be referred, and have to request that the arbitrator appointed on your behalf will as soon as possible put himself in communication with the said —, in order that, before the said two arbitrators enter upon the matter referred to them, an umpire may be nominated either by them or by the Board of Trade, in accordance with the provisions of the Lands Clauses Consolidation Act, 1845, in that behalf.

Dated this — day of —, 19—.

(Signed) —,

Secretary to the — Company.

Appointment of Arbitrator by Landowner.

WHEREAS I, the undersigned [*name and description of landowner*], did on or about the — day of — last, receive a notice in writing from the [*title of company or corporation*], under the hand of —, their secretary [*or town clerk*], requiring to purchase certain lands, buildings, and hereditaments therein mentioned for the purposes of the [*special Act*]. And whereas [*recite notice of claim*]. And whereas I did, on the — day of —, receive from the said company a notice in writing bearing date the — day of —, under the hand of the said [*secretary*], informing me that the said company have by writing under the hand of the said [*secretary*], bearing date the — day of —, appointed [*name and description of arbitrator*] to be the arbitrator to act for the said company, and on their behalf to settle and determine the purchase money and compensation to be paid by the said company for and in respect of the purchase by them of the estate and interest which I, the said [*landowner*], have, or claim to be entitled to, or by the said [*short title of special Act*], am enabled to sell to the said company in the lands and hereditaments situate in —, in the parish of —, in the county of — (being the premises comprised in the notice hereinbefore recited); and also the compensation to be paid by the said company in respect of the damage, injury, or loss, if any, which I, the said [*landowner*] may sustain by reason of the taking of the said lands and hereditaments by the said company and the execution of the works by the said [*short title of special Act*] or the Acts incorporated therewith authorized, and the said company did by their notice now in recital request me to appoint an arbitrator to act for me and on my behalf in the matters aforesaid. Now, therefore, in compliance with the said request of the said company, and in pursuance of the provisions of the Lands Clauses Consolidation Act, Form 35.

Form 35. 1845, I do hereby nominate and appoint [*name and description of arbitrator*] to be the arbitrator on my behalf of and concerning the premises.

As witness my hand, this — day of —, 19—.

(Signed) —.

Notice of Appointment of Arbitrator by Landowner.

Form 36. To the [*title of a company or corporation*] and to —, the secretary [*or town clerk*] of the said company [*or borough*].

I, the undersigned [*name and description of landowner*], do hereby give you notice that, pursuant to your notice and request bearing date the — day of —, 19—, under the hand of the said [*secretary*], giving me notice that you, the said company, had by writing under the hand of the said [*secretary*], bearing date the said — day of — instant, appointed [*name and description of arbitrator*] to be your arbitrator to act for you, and on your behalf to settle and determine the purchase money and compensation to be paid by you, the said company, for and in respect of the purchase by you of the estate and interest which I the said [*landowner*] have or claim to be entitled to, or by the [*short title of special Act*] am enabled to sell to you in the lands and hereditaments situate in —, in the parish of —, in the county of —; and also the compensation to be paid by you, the said company, in respect of the damage, injury, or loss (if any) which I may sustain by reason of the taking of the said lands and hereditaments by you, the said company, and the execution of the works by the said [*short title of special Act*] or the Acts incorporated therewith authorized, and requesting me to appoint an arbitrator to act for me and on my behalf in the matter aforesaid, I have by writing under my hand, bearing date the — day of —,

19—, nominated and appointed [*name and description of arbitrator*] to be the arbitrator on my part and behalf, to whom the said question of disputed compensation shall be referred, a copy of which appointment is hereunto annexed, and the said appointment and nomination will be immediately delivered to the said [*name of arbitrator*] as such arbitrator as aforesaid. Form 36.

Witness my hand this — day of —, 19—.

(Signed) —.

Appointment by Landowner, under Sect. 25, of an Arbitrator to act for both parties where Company fail to appoint.

WHEREAS a dispute has arisen between the — Company (hereinafter referred to as “the company”) and me the undersigned A. B., of —, with respect to the purchase money and compensation to be paid by the company for the estate and interest claimed by me in the lands and hereditaments situate at —, in the parish of —, in the county of —, comprised in a certain notice to treat given by the company to me and dated the — day of —, 19—, and also the compensation to be paid by the company in respect of the damage, injury, or loss (if any) which I may sustain by reason of the taking of the said lands and hereditaments by the company, and the execution of the works authorized by the [*special Act*]. And whereas by an instrument in writing dated the — day of —, 19—, under my hand, I gave to the company notice of the estate or interest to which I claimed to be entitled in the said premises and expressed my desire that the amount to be paid to me as aforesaid should be determined by arbitration in manner provided by the Lands Clauses Consolidation Act, 1845. And whereas by an instrument in writing under my hand, stating the matter Form 37.

Form 37. so required to be referred to arbitration as aforesaid, dated the —— day of ——, 19—, and served on the company on the —— day of ——, 19—, I requested the company to appoint an arbitrator to act for them and on their behalf in the matter in dispute as aforesaid. And whereas the company have for more than fourteen days after service of such notice upon them failed to appoint an arbitrator as requested. And whereas by an instrument in writing under my hand dated the —— day of ——, 19—, I have appointed X. Y., of ——, to be my arbitrator to act for me in the determination of the matter in dispute as aforesaid. Now be it known that in pursuance of the powers of the Lands Clauses Consolidation Act, 1845, I appoint the said X. Y. to act as arbitrator in the matter aforesaid on behalf as well of the company as of myself.

Dated the —— day of ——, 19—.

(Signed) ——.

*Notice to fill Vacancy occasioned by Death of
Arbitrator.*

Form 38.

The —— Company
and
[landowner].

To ——

ON behalf of the above-named company I have to request you to appoint an arbitrator to act for you in the arbitration now pending between you and the company relating to the lands and hereditaments comprised in the notice to treat dated the —— day of ——, 19—, given to you by the company to supply the vacancy caused by the death of A. B., the arbitrator originally appointed by you; and you will please take notice that if for seven days after service of this notice upon you you fail to appoint an

arbitrator as aforesaid, then, and in such case, C. D., the company's arbitrator will, under the provisions in that behalf of the Lands Clauses Consolidation Act, 1845, proceed in the arbitration *ex parte*. Form 38.

Dated, &c.

(Signed) ———,
Secretary of the ——— company.

—————

Notice to Arbitrators to proceed.

In the matter of the [*short title of special Act*] Form 39.
and of an arbitration between
[*landowner*]
and
[*company*].

To [*names and descriptions of arbitrators*].

TAKE NOTICE that the above-mentioned company by this writing, under the hand of ———, their secretary, do hereby give you and each of you notice to proceed, and they hereby require you to proceed, to arbitrate in the matters referred to you by the parties to the said arbitration; and if either of you refuse, or for seven days from the service of this notice neglect to proceed, the other of the said arbitrators may proceed *ex parte*, and his decision will be as effectual as if he had been a single arbitrator appointed by both parties.

Dated this ——— day of ———, 19—.

(Signed) ———,
Secretary.

—————

*Request to Arbitrators to appoint an Umpire.*Form 40.[*Short title of special Act.*]

In the matter of [*short title of special Act*], and of a question of disputed compensation arisen under the said Act between me the undersigned [*landowner*] and the [*name of company*].

To [*names and descriptions of arbitrators*].

I, the undersigned [*name and description of landowner*], request you the said —, as the arbitrator appointed by me and on my behalf, and you the said —, as the arbitrator appointed by and on behalf of the said company, to whom the said question of disputed compensation is referred, to nominate and appoint, by writing under your hands, within ten days after the service hereof upon you and before you enter upon the matters referred to you, an umpire to decide on any such matters so referred to you in which you shall differ, or which shall be referred to him under the provisions of the Lands Clauses Consolidation Act, 1845, or the said [*short title of special Act*]; and if for ten days after this request you neglect or refuse to appoint an umpire, I further give you notice that I shall apply to the Board of Trade to appoint such umpire, pursuant to the provisions of the said Lands Clauses Consolidation Act, 1845, and the Lands Clauses (Umpire) Act, 1883.

Dated this — day of —, 19—.

(Signed) —.

Appointment by Arbitrators of Umpire.

The — Company
and
[landowner].

Form 41.

IN pursuance of the provisions of [*special Act*], and of the provisions of the Lands Clauses Consolidation Act, 1845, and of the Acts amending the same, incorporated therewith, we the undersigned A. B. and C. D., being the arbitrators appointed to settle a claim of disputed compensation arising out of a notice to treat dated the — day of —, 19—, given by the above-named — Company to the above-named —, do, before entering upon the matters referred to us, hereby appoint —, of —, in the county of —, to be the umpire to decide on any such matters on which we may differ, or which shall be referred to him under the provisions of the aforesaid Acts, or any of them.

Dated this — day of —, 19—.

(Signed)

A. B., arbitrator for the company.

C. D., arbitrator for [landowner].

Agreement that Umpire may sit with Arbitrators.

In the matter of the [*short title of special Act*], and of an arbitration between

Form 42.

[landowner]

and

[company].

MEMORANDUM.—We hereby undertake and agree that it shall be lawful for the umpire in this matter to sit and hear evidence in conjunction with the arbitrators, and that

Form 42. the award (if any) of such umpire may be based upon such evidence, although at the time it was taken the arbitrators may not have differed in opinion on the matters referred to them.

Dated this — day of —, 19—.

(Signed) — { Solicitor for the above-named
[landowner].

(Signed) — { Solicitor for the above-named
[company].

*Appointment by Arbitrators of Time and Place for
Proceeding with Reference.*

Form 43.

In the matter of [*short title of special Act*], and of the Lands Clauses Consolidation Act, 1845, and of an arbitration between [*landowner*] and [*name of company*].

WE appoint — day, the — day of — instant, for proceeding in this reference, at [*name of place*], at the hour of — o'clock in the forenoon, at which time and place the parties to the said arbitration, and their counsel, solicitors and witnesses are required to attend.

Dated this — day of —.

— } [*signatures of arbitrators.*]
— }

To the above-named parties.

Agreement as to Number of Witnesses.

In the matter of the [*short title of special Act*], and of Form 44.
an arbitration between

[*landowner*]

and

[*company*].

WE do hereby respectively undertake and agree that the number of professional valuers [*or as the case may be*], to be called as witnesses on behalf of each party in this case shall not exceed —, and that this agreement shall not prejudice the legal rights of the parties on the question of costs.

Dated this — day of —, 19—.

(Signed) — { Solicitor for the above-named
[*landowner*].

(Signed) — { Solicitor for the above-named
[*company*].

Notice to produce Plans and Sections of intended Works.

[*Short title of special Act.*]

Form 45.

In the matter of an arbitration between

[*landowner*]

and

[*company*].

As the solicitor for and on behalf of the above-mentioned —, the claimant in the matter, I hereby give you notice, and require you to produce and show to the arbitrators and umpire in this matter, sitting at —, on — day, the — day of —, the plans and sections showing the direction and levels of the intended [*contemplated works*]

Form 45. proposed to be constructed by you, the above-mentioned company, and described in section — of the above-mentioned Act as —.

Dated this — day of —.

(Signed) —.

To the [*title of company*].

Notice to Landowner to Produce.

Form 46.

[*Short title of special Act.*]

In the matter of an arbitration between
[*landowner*]
and
[*company*].

TAKE NOTICE, that you are hereby required to produce and show, or cause to be produced and shown, to the umpire and arbitrators, sitting at —, on the — day of —, for the purpose of settling and determining the amount of compensation to be paid by the said company to you, the said claimant, for your interest in the messuages, land and hereditaments, situate in —, in the borough of —, in the county of —, all deeds, wills, documents of title, papers, letters, copies of letters, and all writings or other documents containing any entry, memorandum, or minute relating to the names of the several tenants of the property in question, and the amount of rent paid by them respectively during the last five years, and the books, receipts, and papers showing the amount of outgoings in respect of the said property for repairs, parochial and municipal rates and taxes, and for supply of gas and water to the said premises, and the rent account rendered to or for you, showing the sum or sums of money actually paid by the agent or collector over to the owner during the last five years, and also the private

ledger or other book containing the entry of such account, Form 46.
 or any abstract or extract thereof, and also all other books,
 papers, letters, copies of letters, and all other writings and
 documents whatsoever in your custody, possession, or
 power, in anywise relating to the matter in question
 herein.

Dated this — day of —, 19—.

(Signed) —,
 Secretary of the company.

Notice under Sect. 122 to produce Lease.

To A. B. [*tenant*], of —.

Form 47.

WHEREAS the — Company, requiring to purchase and
 take, for the purposes and under the powers of the [*special*
Act], all that piece or parcel of land, with the messuages
 and buildings erected thereon, or on some part thereof,
 situate in the parish of —, in the county of —, and
 which said piece of land and premises so required as afore-
 said are known as No. —, — Street, —, and are
 defined and described on the plans and in the book of
 reference of the works authorized by the said Act, de-
 posited at the office of the clerk of the peace for that
 county, and numbered — in the said parish of —,
 did, by a notice in writing, dated the — day of —,
 19—, and containing all such particulars as are required
 by the Lands Clauses Consolidation Act, 1845, in that
 behalf, give notice to you, the said A. B., of their intention
 to take the said land and premises. And whereas you,
 the said A. B., claiming a greater interest in the said land
 and premises than as tenant at will, claim compensation in
 respect of an unexpired term in the said land and premises.
 Now the said — Company, in pursuance of the 122nd
 section of the said Lands Clauses Consolidation Act, 1845,

Form 47. require you, the said —, to produce the lease or grant in respect of which such claim is made, or the best evidence thereof in your power, in accordance with the provisions of the said Act.

Dated this — day of —, 19—.

(Signed) —,
Secretary to the said company.

*Agreement that no Objection shall be taken by Reason
of the Award being made after the proper Time.*

Form 48. In the matter of an arbitration

Between —
and
The — Company.

I, —, of —, in the county of —, do by this writing under my hand, and we, the — Company, do by this writing under our common seal, consent and agree that no objection shall be taken to the award of —, of —, surveyor, the umpire nominated and appointed by — and —, the arbitrators respectively duly appointed by us in this matter, by reason of the said award not being made within the time by law in that behalf limited; provided that such award be made at any time up to and inclusive of the — day of —, 19—.

Dated this — day of —, 19—.

The common seal of the above-named [company] was affixed hereto in the presence of —.

(Signed) —.

Award by single Arbitrator.

To all to whom these presents shall come, I, A. B., of Form 49.
—, send greeting :

Whereas by an instrument in writing dated the — day of —, 19—, under the hand of C. D., the secretary of the — Company (hereinafter referred to as “the company”), the company gave notice to E. F. (hereinafter referred to as “the vendor”) that they required to purchase and take, under the powers of the [*special Act*] and of the Acts incorporated therewith, the lands and hereditaments [*Insert description as in notice to treat*], and by the said notice the company demanded of the vendor particulars of his estate and interest in the said lands and hereditaments. And whereas the vendor, by an instrument in writing under his hand dated the — day of —, 19—, gave notice to the company that he was tenant for life of the said lands and hereditaments, and claimed to be able to convey the same for an estate in fee simple in possession. And whereas the company and the vendor have not agreed as to the amount of compensation to be paid by the company for the fee simple of the said lands and hereditaments and for any damage that may be sustained by the vendor by reason of the execution of the works authorized by the said [*special Act*], and by an instrument in writing under his hand dated the — day of —, 19—, the vendor signified his desire to have such question of compensation settled by arbitration. And whereas, by an instrument in writing dated the — day of —, 19—, under the hands of —, the secretary of the company, and of the vendor, the company and the vendor concurred in appointing me, the said A. B., as single arbitrator to determine, on behalf both of the company and the vendor, the purchase money and compensation to be paid by the company in respect of the purchase by them of the estate and interest in the said lands and hereditaments which the vendor

Form 49. claimed to be enabled to sell, and also in respect of the damage which the vendor might sustain by reason of the severing of the said lands and hereditaments from the other lands belonging to the same estate, or otherwise injuriously affecting such other lands by the exercise of the powers of the [*special Act*] or the Acts incorporated therewith. And whereas I, the said A. B., have duly made the declaration required by the Lands Clauses Consolidation Act, '1845 (one of the Acts incorporated with the said [*special Act*]), and have viewed the said lands and hereditaments, and in the presence of the company and the vendor, or their respective counsel and solicitors, have duly inquired into the question of compensation so referred to me as aforesaid, and have heard and considered the evidence produced before me on such inquiry. Now, therefore, be it known that I, the said A. B., hereby award and determine that the sum of £—— is the sum to be paid by the company for purchase money and compensation, as well in respect of the estate and interest in the said lands and hereditaments which the vendor claims to be entitled to sell as aforesaid, and also in respect of the damage sustained by the vendor by reason of the severing of the said lands and hereditaments from the other lands belonging to the same estate, or otherwise injuriously affecting such other lands by the exercise of the powers of the said Acts.

As witness my hand this —— day of ——, 19——.

(Signed) A. B.

(ii.) Jury.

Notice of Intention to Summon Special Jury.

[*Title of undertaking.*]

Form 50. To ——.

WHEREAS a notice in writing, addressed to you, dated the —— day of ——, and signed by the secretary of the —— Company, was duly served upon you more than

twenty-one days prior to the date hereof, and the said company did thereby, in pursuance of the provisions of the [*special Act*], and the Lands Clauses Consolidation Act, 1845, and of the Acts amending such last-mentioned Act, give you notice that the said company required to purchase or take all the lands and hereditaments described in the schedule thereto, and delineated on the plan attached thereto, and therein coloured — ; and that they the said company were willing to treat with you for the purchase of the said lands and hereditaments, and as to the compensation to be made to you for the damage that might be sustained by you by reason of the works of the said undertaking. And the said company thereby demanded from you the particulars of your estate and interest in the last-mentioned lands and hereditaments so required as last aforesaid, and of the claim made by you in respect thereof. And whereas you are or claim to be the owner of the said lands and hereditaments, or to be enabled or entitled to sell or convey or release the same for an estate in fee simple in possession (subject to a lease of the same for the unexpired residue of a term of — years at a rent of £— a year). And whereas no agreement has been come to between the said company and you for the purchase by the said company of the said lands and hereditaments, or of the interest belonging to you therein, or as to the compensation to be made to you for the severance of the said lands and hereditaments from other lands whereof you are the owner, or for the otherwise injuriously affecting of such last-mentioned lands by the execution of the said works. Now, therefore, the said company do hereby, in pursuance of the powers and provisions of the said Acts, further give you notice that it is the intention of the said company, after the expiration of ten days from the date of the service hereof upon you, to issue their warrant for summoning a special jury, and to cause such jury to be summoned, for the purpose of ascertaining by their verdict the amount of purchase money and compensation to be paid by the said company

Form 50.

Form 50. for and in respect of the purchase of the estate and interest belonging to you, or which by the said Acts you are enabled or entitled to sell and convey or release in the lands and hereditaments so required to be purchased and taken as aforesaid, and for the damages sustained by severance, or otherwise sustained or to be sustained by you by reason of the execution of the said works and the exercise of the powers of the said Acts. And the said company do hereby further give you notice that they are willing and hereby offer to give the sum of £—— as and for such purchase money and compensation as aforesaid.

Dated this —— day of ——, 19—.

Signed on behalf of the company,

——, Secretary.

Notice of Intention to Summon Special Jury
(*Short Form*).

Form 51. THE —— Company hereby give you notice that, in pursuance of the provisions contained in [*special Act*] and in the Acts incorporated therewith, they intend, within ten days from the service hereof, or as soon as may be thereafter, to issue their warrant to the sheriff for the county of ——, or other the proper officer, for summoning a special jury for the purpose of determining the price and compensation payable to you for the purchase of the estate which, under the powers of the said Acts, or one of them, or otherwise, you claim to be entitled to or enabled to sell and convey to the company in certain lands and hereditaments required by them for the purpose of their undertaking, which are described in a certain notice of the intention of the company to take such lands, dated the —— day of ——, 19—, and duly served upon you, and also the amount of compensation payable to you for any

damage that may be sustained by you by the execution of Form 51.
 the works of the company. And the — Company
 hereby offer you, as full compensation for the said estate
 and interest claimed by you as aforesaid in the said land
 and hereditaments, and for any damage which you may
 sustain by reason of the execution of the works of the
 company, the sum of £—.

Dated this — day of —, 19—.

(Signed) —,

Secretary to the company.

To —.

Warrant to Summon Jury.

[*Special Act.*]

[*County*] to wit.

WHEREAS, in pursuance of the provisions contained in Form 52.
 the [*special Act*] and the Acts incorporated therewith, the
 — Company, by an instrument in writing, under the
 hand of the secretary of the said company, bearing date
 the — day of —, 19—, and addressed to A. B., and
 to all persons having or claiming any estate or interest
 in the lands and hereditaments contained in the schedule
 thereunto annexed, gave them notice that the said company
 required to purchase and take for the purposes of their
 undertaking certain lands and hereditaments, and premises,
 situate in the parish of —, in the said county of —,
 and numbered — on the map or plan and in the book
 of reference deposited with the clerk of the peace for the
 said county, as respects lands in the said parish, and
 which lands and hereditaments so required as aforesaid
 were delineated on the plan attached to or delivered with
 the said notice, and thereon coloured —. And the
 said company thereby gave the said persons notice that
 the said company were willing to treat with them and

Form 52. every of them for the purchase of the said lands and hereditaments so required as aforesaid, and as to the compensation to be made to them and every of them for the damage that might be sustained by them or any of them by reason of the execution of the works authorized by the said Act. And the said company thereby demanded from them and each and every of them the particulars of their respective estates and interests in the lands and hereditaments so required as aforesaid, together with all charges and interests to which the same were subject, and of the claims made by them and each of them in respect thereof. And whereas the said notice was duly served upon the said A. B., in accordance with the provisions of the Lands Clauses Consolidation Act, 1845, in that behalf. And whereas the said A. B. is or claims to be interested in the said lands, hereditaments, and premises under a lease thereof for a term of — years from —, 19—, subject to the payment of the rent and the performance of the conditions and stipulations therein contained, and claims the sum of £— as and for compensation in respect thereof. And whereas the said A. B. and the said company not having agreed as to the amount of purchase money and compensation to be paid by the said company to the said — for his estate and interest in the said lands and hereditaments required as aforesaid, and for any damage sustained or which may be sustained by him by reason of the execution of the works authorized by the said Act, the said company did, by a notice in writing, dated the — day of —, 19—, and duly served on the said A. B. more than ten days before the date hereof, give him notice that it was the intention of the company, after the expiration of ten days from the service of the said last-mentioned notice, to issue their warrant to the sheriff of the county of —, or other proper officer, requiring him to summon a special jury in pursuance of the provisions of the said Lands Clauses Consolidation Act, 1845, in that behalf, to inquire and assess the amount of such purchase

Form 52.

money and compensation as aforesaid which the said A. B. might be entitled to receive under the provisions of the said Acts for and in respect of the lands, hereditaments, and premises in the said notice mentioned and described, and of his estate and interest therein. And the said company did thereby further give the said A. B. notice that they the said company were willing to give the sum of ———/s. as and for such purchase money and compensation. Now, therefore, the said company, in accordance with the said notice, and in pursuance of the powers and provisions of the said Acts, do by this warrant under their common seal issued to you, the said sheriff of the said county of ———, require you to nominate, strike, and reduce a special jury in compliance with the directions of the said Acts, to determine, by their verdict, the sum or sums of money to be paid by the said company for the purchase by them of the estate and interest of the said A. B. in the lands, hereditaments, and premises so required as aforesaid; and also the sum or sums of money to be paid by the said company by way of compensation for the damage, if any, that may have been or may be sustained by the said A. B. by reason of the execution of the works by the said first-mentioned Act authorized, and the exercise by the company of the powers of the said Acts.

Given under the common seal of the ——— Company, this ——— day of ———, 19—.

*Warrant to Sheriff under Protest to summon a Jury
in a case of injuriously affecting.*

[County] to wit:

To the Sheriffs of the county of ———.

Form 53.

WHEREAS we, the ——— Company, have been served with a certain notice in writing in the words and figures following (that is to say):—

[Set out the notice in full.]

Form 52. every of them for the purchase of the said lands and hereditaments so required as aforesaid, and as to the compensation to be made to them and every of them for the damage that might be sustained by them or any of them by reason of the execution of the works authorized by the said Act. And the said company thereby demanded from them and each and every of them the particulars of their respective estates and interests in the lands and hereditaments so required as aforesaid, together with all charges and interests to which the same were subject, and of the claims made by them and each of them in respect thereof. And whereas the said notice was duly served upon the said A. B., in accordance with the provisions of the Lands Clauses Consolidation Act, 1845, in that behalf. And whereas the said A. B. is or claims to be interested in the said lands, hereditaments, and premises under a lease thereof for a term of — years from —, 19—, subject to the payment of the rent and the performance of the conditions and stipulations therein contained, and claims the sum of £—— as and for compensation in respect thereof. And whereas the said A. B. and the said company not having agreed as to the amount of purchase money and compensation to be paid by the said company to the said — for his estate and interest in the said lands and hereditaments required as aforesaid, and for any damage sustained or which may be sustained by him by reason of the execution of the works authorized by the said Act, the said company did, by a notice in writing, dated the — day of —, 19—, and duly served on the said A. B. more than ten days before the date hereof, give him notice that it was the intention of the company, after the expiration of ten days from the service of the said last-mentioned notice, to issue their warrant to the sheriff of the county of —, or other proper officer, requiring him to summon a special jury in pursuance of the provisions of the said Lands Clauses Consolidation Act, 1845, in that behalf, to inquire and assess the amount of such purchase

money and compensation as aforesaid which the said A. B. might be entitled to receive under the provisions of the said Acts for and in respect of the lands, hereditaments, and premises in the said notice mentioned and described, and of his estate and interest therein. And the said company did thereby further give the said A. B. notice that they the said company were willing to give the sum of ———/s. as and for such purchase money and compensation. Now, therefore, the said company, in accordance with the said notice, and in pursuance of the powers and provisions of the said Acts, do by this warrant under their common seal issued to you, the said sheriff of the said county of ———, require you to nominate, strike, and reduce a special jury in compliance with the directions of the said Acts, to determine, by their verdict, the sum or sums of money to be paid by the said company for the purchase by them of the estate and interest of the said A. B. in the lands, hereditaments, and premises so required as aforesaid; and also the sum or sums of money to be paid by the said company by way of compensation for the damage, if any, that may have been or may be sustained by the said A. B. by reason of the execution of the works by the said first-mentioned Act authorized, and the exercise by the company of the powers of the said Acts.

Given under the common seal of the ——— Company, this ——— day of ———, 19—.

*Warrant to Sheriff under Protest to summon a Jury
in a case of injuriously affecting.*

[County] to wit:

To the Sheriffs of the county of ———.

WHEREAS we, the ——— Company, have been served with a certain notice in writing in the words and figures following (that is to say):—

[Set out the notice in full.]

Form 52.

Form 53.

Form 53.

And whereas the said notice was served upon us on the — day of — now last past. And whereas we do not admit that the said house and premises have been injuriously affected by the exercise of the powers contained in the said [*special Act*], or of the other Acts incorporated therewith or any of them, or that the said — has sustained any damage for which we are liable to make any compensation under the said Acts of Parliament or any of them, and we altogether dissent from the said claim, but, subject to and under protest, we are willing to issue our warrant to summon a special jury in order that the amount of compensation which we ought to make in respect of such of the said matters (if any) as may be proved, and as under the said Acts of Parliament we may be liable to make compensation for, may be settled, ascertained, and determined. Now, therefore, we the — Company, in compliance with the request in that behalf contained in the said before mentioned notice, and in pursuance of the provisions of the said Acts of Parliament, and especially the Lands Clauses Consolidation Act, 1845, do by this warrant under our common seal issued to you the said sheriff of the county of —, require you to summon a special jury, in compliance with the directions of the said Acts, for the purpose of settling, ascertaining, and determining (but subject to and under protest as aforesaid) the sum or sums of money to be paid by way of compensation for the damage (if any) sustained by the said — by the said house and premises having been injuriously affected by reason of the exercise of the powers contained in the [*special Act*], and any other Acts incorporated therewith vested in us.

Given under our common seal this — day of —, 19—.

The common seal of the — Company was affixed hereto in the presence of —.

[*Seal.*]

Waiver of Objection to interested Sheriff.

In the matter of the [*special Act*], and in the Form 54.
 matter of a compensation claim between ——
 and the —— Company.

WE hereby consent to this case being taken and heard
 before the sheriff of ——, at his office, ——, on ——, the
 —— day of —— next, and that no objection shall be
 taken on account of the said sheriff being interested in the
 matter in dispute.

Dated the —— day of ——, 19—.

(Signed) ——,

Solicitors for claimant.

——,

Solicitors for company.

—————

*Notice from Sheriff of Appointment of Time and Place
 for Nomination of Jury.*

In the matter of the [*special Act*], and of a claim by
 [landowner]
 against the
 [company].

[County.] By virtue of a certain warrant under the Form 55.
 common seal of the above-named company to me directed,
 I hereby appoint ——day, the —— day of —— instant,
 at —— of the clock in the forenoon, at my office, situate
 ——, in the said county, to be the time and place for the
 purpose of nominating a special jury in the above matter.
 And I hereby summon both parties to appear before me

Form 55. by themselves or their agents at the time and place above mentioned for the purpose aforesaid.

Dated this — day of —, 19—.

(Signature)

—, Sheriff.

To the promoters of the works,
the above-named company,
their solicitors or agents.

Notice from Sheriff of Time and Place for Inquiry.

Form 56.

[Heading as above.]

[County.] By virtue of a certain warrant under the common seal of the above-named company to me directed, I hereby appoint — day, the — day of —, at — o'clock in the forenoon, at the house known by the name of the Sheriff's Office, situate, &c., to be the time and place for the purpose of holding an inquisition pursuant to the said warrant.

Dated this — day of —, 19—.

[Signature of Sheriff.]

To the promoters of the works of
the said company, their agents,
and whom else it may concern.

*Notice by Company to Landowner of Time and Place
for holding Inquiry.*

Form 57.

To —.

THE — Company do hereby, in pursuance of the notice already served upon you on behalf of the said company, dated the — day of —, 19—, give you notice that a jury of persons duly summoned and returned

by the sheriff of the county of —, according to the provisions of the Lands Clauses Consolidation Act, 1845, will sit at [*day and hour*], at the Sheriff's Court, situate, &c., for the purpose of ascertaining, inquiring of, and assessing, and delivering a verdict for, the purchase money and compensation to be paid for and in respect of the lands and hereditaments referred to in the said notice. Form 57.

Dated this — day of —, 19—.

Signed on behalf of the said — Company,

(Signature) —,
Secretary.

(iii.) Surveyors.

*Nomination of Surveyor by Justices, under Sect. 59,
where Landowner prevented from Treating.*

WHEREAS under the provisions of the [*special Act*], and of the Acts incorporated therewith, the — Company have applied to us the undersigned, being two of Her Majesty's justices of the peace for the county of —, to nominate a surveyor to determine the amount of purchase money to be paid to A. B. for the lands specified in the schedule hereto which the said company require to purchase and take for the purposes of their undertaking, and which by the said [*special Act*] they are authorized to take, and also of the compensation to be paid for the damage (if any) to be sustained by the said A. B. by reason of the severing of the lands so to be taken as aforesaid from his other lands, or otherwise injuriously affecting such other lands by the exercise of the powers of the said [*special Act*] or the Acts incorporated therewith. And whereas it has been proved to our satisfaction that the said company are by reason of the absence of the said A. B. from the kingdom prevented from treating with him as to the amount of Form 58.

Form 58. such purchase money and compensation. Now, therefore, we, the said A. B. and C. D., two of Her Majesty's justices of the peace as aforesaid, assembled and acting together at —, do by this writing under our hands appoint X. Y., of —, an able practical surveyor, to determine the amount of the said purchase money and compensation.

Given under our hands this — day of —, 19—.

(Signed) —.

THE SCHEDULE above mentioned.

[Description of Premises.]

Valuation by a Surveyor appointed under Sect. 59.

Form 59. WHEREAS I, the undersigned X. Y., of —, surveyor, have by a certain instrument in writing hereto annexed, under the hands of — and —, two of Her Majesty's justices of the peace for —, been nominated to determine by my valuation the matters therein mentioned. Now I do by this my valuation, in pursuance of the said nomination, determine the sum to be paid by the — Company for the purchase of the estate and interest as stated in the said appointment of and in the hereditaments and premises described in the schedule thereto and for compensation for any injury which will be sustained by the said A. B. by reason of the severing of the said premises from his other lands or otherwise injuriously affecting such other lands by the execution of the company's works, to be the sum of £—.

Dated, &c.

(Signed) X. Y.

(iv.) Yearly Tenancies.

Application for Summons to Tenant from Year to Year to attend before Justices to settle Compensation.

[County] to wit.

Form 60.

THE information of A. B., of —, the secretary of the — Co., made for and on their behalf to me the undersigned, one of the police magistrates of the —, sitting at the — Court, within the —, this — day of —, 19—, whereby he saith that the — Company, by the [*special Act*], with which Act the Lands Clauses Consolidation Act, 1845, is incorporated, being empowered and authorized to purchase and take the premises hereinafter mentioned, did by a notice in writing, dated the — day of —, 19—, and duly served upon E. F., of —, in the parish of —, in the county of —, give to the said E. F., then the occupier of the premises, and claiming to have no greater interest than as tenant for a year or from year to year, notice to give up possession of the said premises, known as —, to the said company, under the powers and for the purposes of the said Acts, which premises are numbered — in the map or plan and book of reference thereto, which relate to the said parish, deposited for the purposes of the said first-mentioned Act at the office of the clerk of the peace for the county of —. And the said company have failed and still fail to agree as to the amount of compensation to be paid to the said E. F. for the value of his unexpired term or interest as aforesaid in the said premises. Whereupon the said — Company by the said A. B. prayeth that the said E. F. may be summoned before a police magistrate of the —, sitting at the — Court, in the said —, by whom the said question of compensation may be heard, determined, and settled, pursuant to section 121 of the Lands Clauses Consolidation Act, 1845.

Exhibited to and taken before me,

X. Y.,

(Signed) A. B.

Police Magistrate of —.

*Summons to appear before Magistrate.*Form 61.

Police Court.

Police District } To E. F., of ——.
 to wit.

WHEREAS information this day hath been laid before the undersigned, one of the magistrates of —, sitting at the Police Court, —, in the county of —, and within the — district, by A. B., of —, secretary to the — Company, that a certain house and premises, known as —, situate at —, in the parish of —, in the county of —, and within the said district, are now in your possession, and that you have no greater interest therein than as tenant from year to year, and that you have been required by the said company, under the provisions of the [*special Act*], to give up possession of the said house and premises before the expiration of your interest therein, and that a difference has risen between you and the said company as to the amount of compensation (if any) to which you are entitled under section 121 of the Lands Clauses Consolidation Act, 1875.

You are therefore hereby summoned to appear on — next, at — o'clock in the — noon, at the Police Court aforesaid, before me, or such other magistrate of the said Police Court as may then be there, who will then and there determine the amount of such compensation, and further deal in the matter aforesaid according to law.

Given under my hand and seal, this — day of —, 19—, at the Police Court aforesaid.

*Proceedings under Sect. 121. Notice to Produce.*In the matter of the [*special Act*].Form 62.

Between the —— Company
and
A. B.

TAKE NOTICE that you are hereby requested to produce on the hearing of the above matter at the Police Court at ——, in the county of ——, on ——, the —— day of ——, 19 —, at the hour of —— in the ——noon, to such magistrate of the said Police Court as may then be there sitting, all papers, documents, letters, writings, receipts, including receipts for rent, rates and taxes, and also all deeds and agreements, and copies of deeds, agreements, documents, letters, writings, and receipts in your possession, custody, or power in any way relating to the matters depending between you and the said company, and particularly all receipts for rent for or in respect of the premises, No. —, —— Street, ——, in the county of ——, now held by you.

Dated this —— day of ——, 19—.

(Signature) ——.

Solicitors to the —— Company.

To A. B., of ——.

(V.) ENTRY BEFORE PURCHASE.

Notice of Intention to apply to Board of Trade to appoint a Surveyor, under the Railway Companies Act, 1867.

Form 63.

To A. B., of —.

WHEREAS, by a certain notice in writing, under the hand of the Secretary of the — Company, dated the — day of —, 19—, and served upon you on the — day of —, 19—, the said company gave notice that they required to purchase and take, under the powers of the [*special Act*] and the Acts incorporated therewith, the lands and hereditaments therein referred to. And whereas you claim to be interested in the said lands. And whereas no agreement has been come to or award made, or verdict given for the purchase money or compensation to be given by the said company in respect of your interest in the said lands and hereditaments. And whereas the said company are desirous, and propose under and subject to the 85th and other sections of the Lands Clauses Consolidation Act, 1845, one of the Acts incorporated as aforesaid, to enter upon and use the same lands and hereditaments for the purposes of the undertaking. Now I, the undersigned, do hereby give you notice that it is the intention of the said company, under the provisions of sect. 36 of the Railway Companies Act, 1867, not less than seven days after the service hereof upon you to apply to the Board of Trade for the appointment of a surveyor to determine the value of the interest in the said lands you claim to be entitled

to or enabled to sell and convey, including the amount of compensation for all damage and injury to be sustained by reason of the exercise of the powers conferred by the 85th section of the Lands Clauses Consolidation Act, 1845, or of the [*special Act*], as far as such damage and injury are capable of estimation. Form 63.

Dated this — day of —, 19—.

(Signed) —,
Secretary of the said Company.

*Application to Board of Trade to appoint a Surveyor
(under the Railway Companies Act, 1867), before
entry on lands.*

To Her Majesty's Commissioners for Trade and Foreign Plantations, commonly called the Board of Trade. Form 64.

WHEREAS the — Company are desirous, under the provisions of [*special Act*] and the Acts incorporated therewith (which include the Lands Clauses Consolidation Act, 1845), of entering upon and using certain lands which are comprised in the copy notice to treat, hereunto annexed, and are situate in the parish of —, in the county of —, and are more particularly described in the schedule and plan attached to the said notice, which was served upon A. B. [*landowner*] on the — day of —, 19—. Land in
the parish
of — in
the county
of —.

And whereas the said A. B. claims to be interested in the said lands, and the said company propose, under and subject to the powers and provisions of the said Acts, to enter upon and use the same for the purposes of the said first-mentioned Act before any agreement, award, or verdict, shall be come to, made, or given, and to deposit in the Bank, by way of security, according to the provisions of the said Lands Clauses Consolidation Act, 1845, such a sum as shall be determined by a surveyor appointed by you under the provisions of section 36 of the Railway

Form 64. Companies Act, 1867, to be the value of the interest in the said lands, which the said A. B. is entitled to or enabled to sell or convey. And whereas the said A. B. does not consent to such entry and user by the said company as aforesaid, and notice of the intention to apply to you for the appointment of a surveyor has been given to him not less than seven days prior to the date hereof. Now, therefore, the said company hereby apply to you to nominate and appoint, under the provisions of the said Acts, a surveyor to determine the value of the said lands and hereditaments.

Dated this — day of —, 19—.

(Signed) —,
Secretary to the — Company.

Bond under Section 85.

Form 65. KNOW ALL MEN by these presents, that we, the — Company, and A. B., of —, and C. D., of —, are held and firmly bound to E. F., of —, in the sum of £—, to be paid to the said E. F., his executors, administrators, or assigns, or to his or their attorney or attorneys, for which payment to be well and truly made, we the company bind ourselves and our successors, and we the said A. B. and C. D. bind ourselves and each of us and our respective heirs, executors, and administrators, and every of them, jointly and severally, by these presents, given under the common seal of the company, and sealed with the seals of the said A. B. and C. D., dated this — day of —, 19—.

Whereas the — Company require to purchase and take for the purposes of the works authorized by the [*special Act*] and the Acts incorporated therewith, certain lands and hereditaments, situate in the parish of —, in the county of —, the particulars of which are set forth in the schedule hereunder written, and which for the better ascertaining them are delineated by the colour — in the

plan annexed to the notice, dated the —— day of ——, 19—, hereinafter mentioned. And whereas the above-named E. F. is or claims to be entitled under the provisions of the said Acts, to sell and convey the said land and hereditaments to the company for an unincumbered estate in fee simple in possession. And whereas the company have, by a notice dated the —— day of ——, 19—, and containing all such particulars as are required by the Lands Clauses Consolidation Act, 1845, in that behalf, given notice to the said E. F. of their intention to take the said land and hereditaments. And whereas no agreement has been come to, or award made, or verdict given for the purchase money or compensation to be paid by the company to the said E. F., for his estate or interest in the said lands and hereditaments, and the company are desirous and propose, under and subject to the powers and provisions of the Lands Clauses Consolidation Act, 1845, to enter upon and use the same for the purposes and under the provisions of the said Act, before any such agreement, award, or verdict shall be come to, made, or given, but the said E. F. does not consent to such entry. And whereas the company have, by a notice, dated the —— day of ——, 19—, duly served on the said E. F., given the said E. F. notice that they intended, after the expiration of seven days from the date of service thereof upon the said E. F., to apply to the Board of Trade for the appointment of a surveyor to determine the value of the said land and hereditaments, according to the 85th section of the Lands Clauses Consolidation Act, 1845. And whereas after the expiration of seven days from the service of the said notice the company applied to the Board of Trade to appoint a surveyor in accordance with the provisions of the Railway Companies Act, 1867. And whereas G. H., of ——, in the county of ——, an able practical surveyor, duly nominated and appointed by the Board of Trade in accordance with the provisions of the last-mentioned Act, has determined the value of the estate

Form 65.

Form 65. and interest which the said E. F. claims to be enabled to sell to the company of and in the said land and hereditaments at the sum of £——. And whereas the company have, in pursuance of the provisions in this behalf contained in the Lands Clauses Consolidation Act, 1845, paid into the Bank of England the sum of £——, in the name and with the privity of the Paymaster-General, to be placed to his account there on behalf of the Supreme Court of Judicature to the credit of the said E. F., as such deposit by way of security to him as required by the said last-mentioned Act. And whereas the said A. B. and C. D. are two sufficient sureties within the meaning of the said Lands Clauses Consolidation Act, 1845. Now the condition of the above-written bond or obligation is such that if the company shall pay unto the said E. F., or deposit in the Bank of England for the benefit of the parties interested in the said land and hereditaments, as the case may require, under the provisions contained in the said Lands Clauses Consolidation Act, 1845, all such purchase money or compensation as may, in manner in the same Act provided, be determined to be payable by the company, in respect of the same land and hereditaments, together with interest thereon at the rate of £5 per cent. per annum from the time of entering on such land and hereditaments until such purchase money or compensation shall be paid to the said E. F., or deposited in the Bank of England for the benefit of the parties interested in the said land and hereditaments under the provisions in the said Lands Clauses Consolidation Act contained, then the above-written bond or obligation to be void; otherwise to remain in full force.

THE SCHEDULE above referred to.

All that piece of land containing together by admeasurement ——, or thereabouts, situate in the parish of ——, in the county of ——, and being the land and hereditaments numbered —— in the plans and the book of refer-

ence thereto of the works authorized by the [*special Act*], Form 65.
deposited at the office of the clerk of the peace for the said
county.

The common seal of the said company }
was affixed hereto in the presence of — }
Signed, sealed, and delivered by the }
above-mentioned A. B., in the presence }
of —.

Signed, sealed, and delivered by the }
above-mentioned C. D., in the presence }
of —.

Notice of Entry to probe, bore, stake out, &c.

The — Company.

To —.

The — Company having, under and by virtue of Form 66.
[*special Act*], and of the Lands Clauses Consolidation Act,
1845, authority granted to them to enter upon your lands
at —, in the parish of —, in the county of —, for
the purpose of surveying or of taking levels of such lands,
and of probing or boring to ascertain the nature of the
soil, and of setting out the line of the works, after giving
not less than three nor more than fourteen days' notice to
the owners or occupiers thereof, making compensation for
any damage thereby occasioned, do hereby give you notice
that it is their intention, after the expiration of three days
from the service of this notice, by their agents and work-
men, for the purposes hereinbefore referred to, or some of
them, to enter upon such lands for the purposes aforesaid,
or some or one of them, making you compensation for any
damage thereby occasioned.

Dated this — day of —, 19—.

(Signed) —,

Secretary to the [*company*].

Note.

In leaving with you the above notice the company beg

Form 66. to add that they have desired their agents and workmen to set out the line with the least possible inconvenience, and that complaint of violating these instructions will meet with immediate attention at the offices of the company.

This notice is for the preliminary purpose of setting out the line only, and does not extend to any proceeding for the purpose of acquiring such of your land as may be required to be purchased or used by the company for the construction of their intended railway and works.

(VI.) PAYMENT INTO COURT.

*Request to Paymaster-General to prepare Directions
for Payment into Court under Sect. 69.*

In the High Court of Justice, Chancery Division.

Form 67.

Ex parte [*the promoters of the undertaking*]:

In the matter of the [*special Act*]:

In respect of lands at ——— claimed by A. B. [*add words
briefly expressive of the nature of the disability to sell
and convey by reason of which the money is paid in*].

See
Supreme
Court
Funds
Rules,
1894, rr. 30
and 39.

Ledger credit as above.

The Paymaster is requested to issue a direction to the Bank of England to receive from [*the promoters*] the sum of £—— for the ledger credit in the books of the Pay Office above specified.

Dated the ——— day of ——— 19——.

(*Signature and address of solicitor*).

Solicitor to the ——— Railway Company.

Paymaster's Direction for Payment into Court.

Form 68. To the Agent of the Bank of England (Law Courts Branch).

Please receive the above-stated sum, and place it to the account of the Paymaster-General for the time being for and on behalf of the Supreme Court of Judicature.

(Signed) —.

[Date].

Bank Certificate of Receipt.

To the Assistant Paymaster-General.

Bank of England, —, 19—.

The above-stated sum has been this day received.

(Signed) —.

Request to Paymaster-General to prepare Directions for Payment into Court under Sect. 85.

Form 69. In the High Court of Justice, Chancery Division.

Ex parte [*the promoters of the undertaking*] :

In the matter of the [*special Act*] :

The account of A. B. in respect of lands claimed by him at —.

Ledger credit as above.

The Paymaster is requested to issue a direction to the Bank of England to receive from [*the promoters*] the sum of £— for the ledger credit in the books of the Pay Office above specified, being the amount determined by a surveyor duly appointed under sect. 85 of the Lands Clauses Consolidation Act, to be the value of the above-mentioned lands.

Dated this — day of —, 19—.

(Signed) —,

Solicitors for the — Company.

*Authority for Company to present Petition for
Payment out of Deposit under Sect. 85.*

The — Company
and
A. B. [*landowner*].

Form 70.

We hereby authorize you to present a petition in the joint names of the above-mentioned A. B., and the above-mentioned company for the payment out of court to the company of the sum of £ —, paid into the Bank of England by them in the month of —, 19—, under the provisions of sect. 85 of the Lands Clauses Consolidation Act, 1845, before taking compulsory possession of certain land, in the parish of —, in the county of —, the purchase of which has since been completed, and the purchase money and interest paid by the company.

(*Signatures*) —
Solicitors for the said A. B.

To Messrs. —,
Solicitors for the said company.

(VII.) APPORTIONMENT OF RENT-CHARGES.

*Notice of Claim for Apportionment of Rent-charge
under Sect. 116.*Form 71. [Begin as in Form 16.]

And I further give notice to the said company that I require an apportionment of the said yearly rents of £—— and £——, respectively, pursuant to the terms and provisions of the said Lands Clauses Consolidation Act, 1845.

*Summons to Apportion Rent-charge.*Form 72.

Borough of ——, in }
the county of ——, }
to wit.

To the —— Company, A. B. [*landowner*], and C. D. [*the owner of the rents*].

Whereas information hath this day been laid before me, the undersigned X. Y., the stipendiary magistrate for the said borough, that by an indenture, dated the —— day of ——, 19—, made between —— of the one part, and —— of the other part, certain hereditaments therein described as situate, &c., were assured by the said —— to the said ——, subject to the payment thereof of a perpetual yearly rent of £——.

And that the said hereditaments are now vested in you, the said A. B., in fee simple, subject to the payment of the said yearly rent.

And that all benefit and advantage of the said yearly Form 72.
rent of £—— is now vested in you, the said C. D.

And that you, the said company, in pursuance of the powers vested in you by the [*special Act*], are for the purposes of the said Act about to purchase and take the interest of the said A. B. as the owner in fee simple, in —— square yards, being part of the site of the said hereditaments.

And that, pursuant to the Lands Clauses Consolidation Act, 1845, which is incorporated with the said Act, the said yearly rent of £—— ought to be, and the said A. B. has by notice in writing under his hand, and dated the —— day of ——, and served upon the said company, required that the same shall be apportioned between the lands so required and about to be taken for the purposes of the said [*special Act*], and the residue of such lands.

And that such apportionment has not been so settled by agreement between the parties interested therein or affected thereby.

These are, therefore, to command you, in Her Majesty's name, to be and appear on ——, the —— day of ——, 19—, at —— o'clock in the ——, at the Borough Court, at ——, in the said borough, before me, the said stipendiary magistrate, or such two other of Her Majesty's Justices of the Peace as may then be there, in order that such apportionment may be settled in pursuance of the said statutes, and such other proceedings had and taken therein as to the law do appertain.

Given under my hand and seal this —— day of ——, in the year of our Lord, 19—, at the Police Court of the said borough.

(Signed) X. Y.

[Seal.]

*Order of Justices apportioning Rent-charge.*Form 78.

Borough of —, in }
 the county of —, }
 to wit.

BE it remembered that on the — day of —, in the year of our Lord —, information was laid before us, the undersigned A. B. and C. D., two of Her Majesty's Justices of the Peace for the said county acting in and for the said borough, that by an indenture, dated, &c., and made between E. F. of the one part and G. H. of the other part, certain hereditaments therein described as situate, &c., were assured to the said G. H., subject to the payment thereof of a perpetual yearly rent of £— to the said E. F.

And that the said company, in pursuance of the powers vested in them by the [*special Act*], and the Acts incorporated therewith, were, for the purposes of the said Act first mentioned, about to purchase and take the interest of the said G. H. in — square yards of land, being part of the site of the said hereditaments.

And that pursuant to the Lands Clauses Consolidation Act, 1845, which is incorporated with the said Act, the said yearly rent of £— ought to be, and the said G. H. had by notice in writing under his hand, and dated the — day of —, 19—, and served upon the same company, required that the same should be apportioned between the lands so required and to be taken for the purposes of the said [*special Act*], and the residue of such lands, and that the apportionment had not been so settled by agreement between the two parties interested therein or affected thereby.

Now, therefore, at this day, to wit, on the — day of —, 19—, at the Borough Court, at —, in — aforesaid, the parties aforesaid appearing by their respective solicitors before us, the said justices,

We do adjudge and order that the said rent of Form 73.
£—— reserved and made payable by the said recited
indenture shall be apportioned. And we the said justices
do hereby, in pursuance of the statutes in that behalf
enabling us, settle and apportion the said rent in manner
following, that is to say : That from and after this —— day
of ——, the yearly sum or rent of £—— (part of the said
yearly rent of £——) shall be apportioned and payable in
respect of the portion of the said hereditament which is
about to be taken and purchased by the said company as
aforesaid ; and that from and after the said last-mentioned
day the yearly rent or sum of £——, and no more, shall
be apportioned and payable in respect of the residue of the
said hereditaments which will not be so taken as aforesaid
by the said company. Such several sums or rents, so appor-
tioned and payable as aforesaid, nevertheless to be re-
spectively payable and paid at such time and in such
manner, and subject to such powers and remedies in all
respects as the said yearly chief or ground rent of £——,
was heretofore reserved, made payable, and subject by the
before-mentioned indenture.

Given under our hands and seals the day and year first
above written.

(VIII.) SUPERFLUOUS LANDS.

*Notice to adjoining Owner, under Sect. 128, of
Intention to Sell Superfluous Lands.*

Form 74. To A. B. [*landowner*], of —.

The — Company, pursuant to the provisions of an Act passed in the — and — years of her present Majesty Queen Victoria, intituled —, and of the several Acts incorporated therewith or relating to their undertaking, and in particular of sect. 128 of the Lands Clauses Consolidation Act, 1845, hereby offer to you for sale, as superfluous lands, the land described in the tracing hereunto attached, and thereon coloured —, and hereby give you notice that if within six weeks from the service thereof you do not signify to the said company that you are desirous of purchasing the same, the said company will proceed to a sale thereof in such manner as they shall think fit.

Dated the — day of —, 19—.

(Signed) —,

Secretary to the said Company.

C O S T S
UNDER THE LANDS CLAUSES ACTS
WITH THE
RULES UNDER THE LIGHT RAILWAYS ACT, 1896.

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COSTS OF ARBITRATIONS & INQUIRIES UNDER THE LANDS CLAUSES ACTS.

THE costs of an inquiry before a jury are regulated by sects. 51 and 52 of the Lands Clauses Act, 1845 (*supra*, pp. 151—153). Under sect. 52 of that Act and sect. 1 of the Lands Clauses (Taxation of Costs) Act, 1895 (*supra*, p. 369), they are taxed and settled in case of difference by a Master of the Supreme Court. Under sect. 34 of the Act of 1845 costs of an arbitration are settled by the arbitrators (*supra*, p. 130), but these costs also may be taxed by a Master under the Act of 1895, and, in either case, his taxation is not subject to review by the Court (*supra*, pp. 153, 370). Similarly, where the Master taxes as *persona designata* under a special statute, his taxation is not open to review. (*Re Sheffield W. W. Act*, 1866, L. R. 1 Ex. 54.)

The Masters tax these costs on the same principles as where they act as officers of the Court. It is a party and party taxation, not solicitor and client; and the Rules of the Supreme Court as to costs, so far as applicable, are a guide to them in these taxations. (Johnson on Costs, 2nd ed. p. 540.)

Where the lands are situate in the City of London the costs of an inquiry before a jury are taxed before the registrar of the Lord Mayor's Court. (Johnson on Costs, p. 540.)

The costs of conveyances and the taxation of such costs are provided for by sects. 82 and 83 of the Act of 1845 (*supra*, pp. 251—255).

SHERIFF'S FEES.

Order dated 2nd August, 1900, under Sheriff's Act, 1887, s. 20.

SCALE OF SHERIFF'S FEES FOR INQUIRIES UNDER THE
LANDS CLAUSES ACT, 1845.

			£	s.	d.
1.	Notice of nominating special jury	0	5	0
2.	Notice of holding inquiry	0	5	0
3.	Nominating jury	2	2	0
4.	Notices of reducing	0	5	0
5.	Reducing	1	1	0
6.	Twenty-four warrants to summon special jury		1	4	0
7.	Summoning officer (2s. each)	2	8	0
8.	Attending engaging room, and afterwards attending arranging room	0	5	0
9.	For hire of room (reasonable amount actually paid).				
10.	Presiding in Court and preparing inquisition :				
		three hours	5	5	0
	Ditto ditto	all day	10	10	0
11.	Attending filing inquisition	0	13	4
12.	Incidental expenses	1	1	0
13.	Clerk	2	2	0
14.	Ushers	0	10	0
15.	Copy warrant	0	5	0
16.	Subpoena for three names	0	5	0
17.	Under-sheriff's view (if required)	1	1	0
18.	Travelling allowance for under-sheriff and clerk (reasonable expenses actually incurred).				

NOTE.—Common jury same as special jury.

1. *Ordinary Allowances made by the Masters of the Supreme
Court in Compensation Cases under the Lands Clauses
Consolidation Act, 1845.*

		£	s.	d.
Instructions, from 13s. 4d. to	2	2	0
Perusing the company's warrant to the sheriff	..	0	6	8

COSTS USUALLY ALLOWED.

469

	£	s.	d.
Instructing the qualifying surveyors (each) ..	0	13	4
Case to advise on evidence (ordinary charges).			
Instructions to have the case tried by a special jury (section 54)	0	6	8
Notice to the sheriff and to the company (each) ..	0	5	0
Nominating, &c. special jury (ordinary charges).			
Instructions for brief (ordinary charges).			
Drawing (1s. per fo.), copying (4d. per fo.).			
Notice to produce and admit (ordinary charges).			
Consultations (as usual).			
Instructions to counsel for a view (each)	0	6	8
<i>Fee to counsel and clerk for a view (each) (a)</i> ..	5	10	0
Attending view	2	2	0
Travelling expenses (as usual).			
Attending sheriff for summonses for witnesses (6s. 8d. for every three).			
<i>Paid sheriff for summons for each witness (5s. for every three).</i>			
Serving each witness	0	5	0
Mileage (as usual).			
Attending inquiry (first day)	3	3	0
The like, clerk's attendance	1	1	0
Travelling expenses (as usual).			
Attending under-sheriff for return	0	6	8
<i>Paid (as paid).</i>			
Plans, not exceeding	10	10	0
Letters, messengers, &c.	1	0	0
Bill of costs and copy (as usual).			
Attending taxing (as usual).			
<i>Paid (as paid).</i>			

The ordinary allowance to surveyors for qualifying is five guineas per day actually employed, and three guineas for making a report (b).

Two surveyors only are allowed by the Masters; but

(a) One counsel only allowed by the Registrar of the Mayor's Court on a view, and then three guineas only.

(b) Ryde's scale never allowed to witnesses (*Drew v. Joselyne* (1888), 4 T. L. R. 717).

where the costs are taxed by the Registrar of the Mayor's Court, London, three are allowed, and ordinarily a lump sum to each, proportioned to the value and extent of the premises—from ten to fifteen guineas, or more, if the amount is large.

In the City, where plant is valued, the usual allowance is 5 per cent. on the first 100*l.*, 2½ per cent. up to 500*l.*, and 1 per cent. beyond that sum.

Fees to counsel are in the discretion of the taxing officer. The ordinary allowance by the Master is from 50 to 75 guineas to the leader, and from 30 to 40 guineas to the junior, where the amount is large. In the City of London the maximum for the leader is 50 guineas, and for the junior 30 guineas, unless in a very exceptional case. In ordinary cases only one counsel is allowed on arbitrations (*a*).

2. *Claimant's Costs of Assessment before a Special Jury of Compensation for Lands taken by a Railway Company.*

19—.	July. Attending accepting service of notice to treat on behalf of the trustees	£	s.	d.
	Instructions	0	6	8
	Instructions to Mr. J., surveyor, to qualify ..	2	2	0
	Attending the solicitors of the company on their delivering bond for taking possession, and accepting service	0	13	4
	Aug. 9. Attending accepting service of notice to treat	0	6	8
	— 11. Attending accepting service of further notice to treat	0	6	8
	Letter to Mr. T., asking him for an appointment to see him thereon, and also as to whether the claims could be settled	0	3	6
	— 16. Attending at Mr. T.'s, and conferring as to the company having taken possession of the lands without having given the usual bonds, conferring thereon, and I assented to waive the			

(*a*) *Drew v. Josolyne* ((1888), 4 T. L. R. 717.)

	£	s.	d.
bonds upon his writing me a letter that the claimant should be placed in the same position as though she had been served; and he wished me to send in claims before he discussed terms of settlement	0	13	4
Sept. 3. Instructions for notice to issue warrant to summon a jury as to part of No. 10 on the plan	0	6	8
Drawing same (fos. 10)	0	10	0
— 6. Drawing notice as to remaining part of No. 10 (fos. 10)	0	10	0
Drawing instructions as to No. 14	0	10	0
Attending obtaining Mr. W.'s signature to notice and explaining same	0	6	8
Oct. 3. Attending at Mr. T.'s, when he accepted service of the notices on behalf of the company..	0	6	8
Having received letter that the company had lodged one warrant, letter to them for copy	0	3	6
— 30. Attending to nominate special jury.. .. .	0	13	4
Copy list	0	5	0
Instructions to reduce	0	13	4
Attending to reduce	0	6	8
Copy reduced list	0	2	6
Nov. 2. Six subpoenas ad test. (including sheriff's fees)	1	3	4
Copy and service on Mr. L., at Stoke Newington (4 miles)	0	8	0
The like on three other witnesses, and mileage (as paid).			
Letter to Mr. J. (surveyor), informing him of the appointment for inquiry	0	3	6
Letters to Mr. M. and Mr. D., two other surveyors (each 3s. 6d.).			
Instructions to advise on evidence	0	13	4
<i>Fee to Mr. W. to advise on evidence, and clerk</i> ..	2	4	6
Attending him.. .. .	0	6	8
Attending Mr. J., instructing him as to plans required upon the inquiry	0	6	8
Instructions for brief, including attendances at Tottenham, Stoke Newington, Westminster, Langham Street and Edmonton, and paid expenses and railway fares and cab hire	6	6	0
Drawing same (fos. 115)	5	15	0

	£	s.	d.
Two brief copies thereof (4d. per fo.)	3	16	8
Two brief copies of the following documents, to accompany:—			
Notice to treat as to No. 10 on the plan (part) (fos. 7)	0	4	8
The like as to claim (fos. 10)	0	6	8
Notice to treat as to remainder of No. 10 (fos. 7)	0	4	8
The like of claim (fos. 10)	0	6	8
Notice to treat as to No. 14 (fos. 7)	0	4	8
The like of claim (fos. 10)	0	6	8
Warrant to summon jury (fos. 10)	0	6	8
Drawing plans on ditto	0	10	0
Notice to produce	0	4	0
Correspondence (fos. 26)	0	17	4
Plans for counsel, surveyors, and sheriff, &c. ..	2	2	0
<i>Fee to Mr. H., Q. C., with brief, and clerk</i>	53	16	6
Attending him	0	13	4
<i>Fee to Mr. W., with brief, and clerk</i>	21	15	0
Attending him	0	13	4
<i>Consultation fee to Mr. H.</i>	2	7	0
Attending to appoint	0	3	4
<i>Consultation fee to Mr. W.</i>	1	3	6
Attending him	0	3	4
Attending consultation	0	13	4
<i>Fee to Mr. H. and clerk, on view</i>	5	10	0
Attending to appoint	0	6	8
<i>Fee to Mr. W. and clerk, on view (a)</i>	3	5	6
Attending him	0	6	8
Attending sheriff's court upon hearing of inquiry, appointing Mr. J. as viewer on behalf of Mrs. W.; afterwards attending at H. Lane with jury, and upon their return proceeding with the inquiry, when a verdict was given for the claimant for 1,200 <i>l.</i> for the land taken, and 200 <i>l.</i> for the damage to the residue (engaged from 10 a.m. to 5 p.m.), and view	4	4	0
<i>Paid fees on hearing</i>	—		

(a) *Vide supra*, p. 469, n. (a).

	£	s.	d.
Drawing bill of costs and copy, and copy for the company's solicitor.. .. .	2	0	0
Attending for appointment to tax	0	3	4
Notice of taxing, copy and service	0	4	0
Attending taxing	1	11	6
<i>Paid taxing fee</i>	—		
Attendances, letters, messengers, telegrams, post-ages, cab hire, and incidental expenses not before charged	2	2	0
<i>Paid surveyors and other witnesses, as follows :—</i>			
Mr. J. (surveyor)	24	10	0
Mr. D. (surveyor)	16	0	0
Mr. M. (surveyor)	3	3	0
Mr. A.	1	1	0
Mr. S. C... .. .	1	1	0
Mr. R.	3	3	0
Mr. C.	1	1	0

3. Claimant's Costs on Assessment by a Special Jury of Compensation for Lands taken and Damage by Severance.

	£	s.	d.
1900. July 26. Instructions to Mr. T. to survey land taken and damage done by severance, and to report us thereon, and fair copy; also plans of adjoining estates, and numerous papers to accompany same, and attendance	1	1	0
Aug. 10. Having received letter from claimant approving of claim, instructions for claim	0	6	8
Drawing same.. .. .	0	13	4
Engrossing claim in duplicate	0	6	8
— 12. Letter to claimant with instructions to sign claims and return them to us	0	3	6
— 15. Attending at South Western Railway offices at Waterloo terminus serving claim on secretary.. .. .	0	6	8
— 17. Having received letter from Messrs. B. & Co. (the company's solicitors) proposing that their surveyor should meet Mr. T. to settle compensation, letter in reply.. .. .	0	3	6
Making copy valuation for claimant	0	5	0

	£	s.	d.
Sept. 7. Attending Mr. C., the company's surveyor, conferring hereon, and referred him to Mr. T., who was instructed to endeavour to arrange with him the amount of compensation.. .. .	0	6	8
— 8. Attending Mr. T. instructing him to see Mr. C., and conferring upon valuation (engaged two hours)	0	13	4
— 13. Attending Messrs. B. & Co., when they brought us notice of intention to summon a jury, and left duplicate to indorse our acceptance thereon; and they wished us to employ Mr. H., Q.C., to enable them to have Mr. L., who held a general retainer for the company; promised to consider it and let them know	0	6	8
Letter to Messrs. B. & Co. as to our retaining Mr. H.	0	3	6
Letter to claimant informing him the company was about summoning a jury	0	3	6
1901. March 1. Having received letter from Messrs. B. & Co. asking for six prints of the particulars and conditions of sale of the 7th July and 7th Sept. last, and a printed copy deed referred to in the 7th condition, letter in reply inclosing same	0	3	6
Letter to Messrs. B. & Co. to endeavour to arrange a day for inquiry to take place	0	3	6
— 8. Having received letter from Messrs. B. & Co., and also notice to summon special jury, writing letters to Messrs. O., P., T., S., W., and Y., informing them that hearing was appointed for Friday, the 24th inst.	0	11	0
Attending bespeaking copy of warrant to summon jury, and afterwards for same	0	6	8
<i>Paid</i>	0	5	0
— 13. Attending at Queen's printers for and obtained three copies of Company's Act	0	6	8
<i>Paid for same</i>	0	6	0
Attending nominating special jury	0	13	4
Attending for and obtained copy special jury panel	0	6	8
— 15. Making fair copy special jury panel	0	2	6
Letter to claimant therewith and thereon	0	3	6
Having received letter from Messrs. B. & Co. inquiring if we should have a junior counsel, letter in reply	0	3	6

	£	s.	d.
Instructions for brief, including numerous attendances upon different persons in B. and adjoining neighbourhood to ascertain value of land ..	12	12	0
Drawing brief (fos. 180)	9	0	0
Making two fair copies thereof (4d. per folio) ..	6	0	0
The like correspondence (fos. 16)	0	10	8
The like conveyance from H. to P. (fos. 54) ..	1	16	0
Plans thereon	0	10	0
The like articles of agreement (fos. 12)	0	8	0
Plans	1	10	0
The like warrant to summon jury (fos. 12) ..	0	8	0
Plans	0	10	0
The like notices to inspect and produce (fos. 48) ..	1	12	0
Attending Mr. H., Q.C., with brief and papers ..	0	13	4
<i>Fee to him and clerk</i>	75	7	0
Attending him appointing view	0	6	8
<i>Fee to him and clerk</i>	5	10	0
Attending him appointing conference on evidence..	0	6	8
<i>Fee to him and clerk</i>	2	7	0
Attending conference with Mr. H., Q.C., with Mr. O., Mr. P., and Mr. T., entering fully into the case, when Mr. H. advised that we should subpoena those persons who had bought land in the neighbourhood, and sold at a profit ..	0	13	4
Attending Mr. H. appointing consultation with Mr. R.	0	3	4
Attending Mr. R. with brief and papers	0	13	4
<i>Fee to him and clerk</i>	37	15	0
Attending him appointing view	0	6	8
<i>Fee to him and clerk</i>	3	5	6
Attending him appointing consultation	0	3	4
<i>Fee to him and clerk</i>	1	3	6
— 16. Letter to claimant with full particulars of approaching inquiry	0	3	6
Drawing notice to inspect and admit, and fair copy (fos. 10)	0	10	0
The like to produce	0	10	0
— 17. Instructions to reduce special jury	0	13	4
Attending reducing	0	6	8
Fair copy reduced list	0	2	6
Notice to Messrs. B. & Co. that claimant required view, copy and service	0	4	0

Copies notice to inspect and admit, to mark for inspection	£	s.	d.
	0	4	0
— 20. Attending Messrs. B. & Co. producing documents for their inspection (engaged two hours)..	0	13	4
Attending receiving admissions	0	6	8
Having received letter from Messrs. B. & Co. requesting us to make them a copy of conveyance to Mr. P. and agreement, making same, as follows:—			
Copy deed of conveyance and plan (fos. 54) ..	1	3	0
Copy of agreement, and plan (fos. 12) ..	0	19	0
Letter to Messrs. B. & Co. therewith	0	3	6
Twenty subpoenas (6s. 8d. for every three).. ..	2	6	8
<i>Paid Sheriff's fees</i>	1	15	0
Copies and services on twenty persons, conduct-money, and mileage (as paid).			
Paid for six copies of the plan of Land Society's land adjoining claimant's	0	3	0
Attending to inspect documents, same not left out	0	6	8
Journey to and attending on the land and viewing same with counsel	1	1	0
<i>Paid expenses</i>	0	5	0
— 24. Attending inquiry at ———, and thence to view land with the jury; further hearing adjourned until the next day at 10, at the Sessions House, Newington	3	3	0
Clerk's attendance	1	1	0
Instructions to Mr. H., Q.C., to attend at Newington Sessions House	0	6	8
<i>Fee to him and clerk</i>	27	0	0
Attending him.. .. .	0	13	4
— 25. Attending adjourned inquiry, when the jury awarded the claimant 5,600 <i>l.</i> (engaged all day)	3	3	0
Clerk's attendance	1	1	0
Drawing bill of costs and two fair copies	2	15	0
Attending for appointment to tax	0	3	4
Notice thereof, copy and service	0	4	0
Attending taxing	3	3	0
<i>Paid</i>	—		
Letters, messengers, cab hire, &c., not before charged	1	1	0
<i>Paid witnesses</i>	—		

4. *Claimant's Costs on Inquiry before Under-Sheriff and a Special Jury on Compulsory Purchase of an Inn under the Lands Clauses Acts.*

Between J. S., Claimant,
and
The ——— Railway Company.

Verdict for 4,000*l.*

	£	s.	d.
19—. Jan. 12. Instructions for claim	2	2	0
Perusing notice to treat and plan annexed thereto, received from the solicitors to the railway company	0	6	8
Enclosing acceptance of service on duplicate notice to treat	0	5	0
Writing solicitor to the railway company with duplicate notice to treat, indorsed with acceptance of service	0	3	6
Attending Mr. ——— instructing him to value the premises and the business.. .. .	—		
Feb. 8. Perusing amended notice to treat, received from solicitor to railway company, with plan annexed	0	6	8
Indorsing memorandum of acceptance of service ..	0	5	0
Writing solicitor with duplicate notice indorsed ..	0	3	6
Perusing further amended notice to treat with plan annexed, received from solicitor	0	6	8
Indorsing memorandum of service	0	5	0
Writing solicitor with duplicate notice indorsed ..	0	3	6
Having received our valuation, writing railway company's local agent with claim for 5,000 <i>l.</i> ..	—		
— 11. Attending railway company's local agent, conferring as to claim, when he desired to make arrangements for railway works to proceed under the premises, and pay 1,000 <i>l.</i> deposit to secure any damage.. .. .	0	6	8
April 1. Writing agent for railway company con- senting to the company having a view as desired	0	3	6
Writing Mr. J. S. hereon, instructing him to permit Mr. ——— to view the premises.. .. .	0	3	6
May 1. Having received notice of the company's intention to summon jury, perusing same, and indorsing acceptance of service thereon on behalf of Mr. J. S... .. .	0	6	8

— 15. Attending under-sheriff to know what day he proposed to appoint for nominating jury, and with him on company's solicitor, arranging date suitable to all parties	£	s.	d.
	0	6	8
— 16. Instructions to nominate special jury ..	0	6	8
— 26. Attending instructing Mr. ——— (surveyor) to inspect premises and books, so as to ascertain value of the premises and of the trade, and to report, and subsequently perusing his report ..	1	1	0
The like Mr. ———	1	1	0
Attending at sheriff's office when special jury nominated	0	13	4
Copy list of jurors	0	5	0
Writing company's solicitor to know which, if any, of the jurors were shareholders	0	3	6
— 28. Attending under-sheriff for 6 subpoenas for witnesses	0	13	4
<i>Paid him for same</i>	0	10	0
Instructions to reduce special jury	0	6	8
— 30. Attending company's agent, conferring as to jury list, and to know the names of those he objected to, when he suggested that we should mutually formulate them at the same time, and that he would be prepared to name those he objected to on Wednesday	0	6	8
June 2. Drawing notice to produce	0	5	0
Fair copy (folios 4)	0	1	4
Drawing notice to inspect and admit	0	5	0
Fair copy (folios 9)	0	3	0
Writing company's solicitor therewith	0	3	6
Copies of 6 subpoenas (at 1s.)	0	6	0
— 5. Attending at under-sheriff's reducing special jury	0	13	4
Copy reduced list of jurors	0	2	6
— 6. Service of subpoena on Mr. ———	0	5	0
The like 5 other witnesses (each 5s.)	—		
Instructions for brief, attending the witnesses, conferring as to their several reports, perusing plans, &c., &c.	15	15	0
Drawing brief and proofs (folios 95)	4	15	0
Two fair copies	3	3	4
Two copies correspondence (folios 50)	1	13	4
Two copies notice to produce (folios 4)	0	2	8

COSTS USUALLY ALLOWED.

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	£	s.	d.
Two copies notice to inspect and admit (fos. 9) ..	0	6	0
Two copies notice to treat (fos. 6)	0	4	0
Two copies of all other necessary documents (at 4d. per folio).			
Attending Mr. ———, Q.C., with brief	0	13	4
<i>Paid his fee and clerk</i>	—		
Attending Mr. ——— with brief	0	13	4
<i>Paid his fee and clerk</i>	—		
<i>Paid Mr. ———, Q.C., consultation fee and clerk</i> ..	2	7	0
Attending him	0	6	8
<i>Paid Mr. ——— consultation fee and clerk</i>	1	3	6
Attending him	0	3	4
Attending consultation	0	13	4
<i>Paid fee to Mr. ———, Q.C., to view, and clerk</i> ..	5	10	0
Attending him	0	6	8
Attending inquiry before under-sheriff, when verdict was given for 4,000 <i>l.</i> (engaged all day) ..	3	3	0
Attending for under-sheriff's judgment	0	6	8
<i>Paid for certified copy thereof</i>	0	4	0
July. Drawing costs and copies (at 1 <i>s.</i> per folio)	—		
Attending obtaining appointment to tax	0	3	4
Notice of taxing, copy and service	0	4	0
Attending taxing	1	1	0
Letters, messengers and incidentals	2	2	0
<i>Paid witnesses</i>	—		

*5. Claimant's Costs of Inquiry before Sheriff and Jury, verdict for 2,000*l.**

	£	s.	d.
19—. April. Many attendances on claimant obtaining instructions to obtain compensation on his premises being compulsorily taken by the corporation	2	2	0
Attending promoters' solicitors accepting service of notice of jury	0	6	8
Drawing and fair copy particulars of claim ..	0	10	0
Writing the town clerk therewith	0	3	6
Attending at Exeter nominating special jury ..	1	1	0
Copy list of jurors	0	5	0

	£	s.	d.
May 10. Instructions to reduce	0	6	8
Attending at Exeter reducing jury	1	1	0
Copy reduced list	0	2	6
Instructions to counsel to advise on evidence ..	0	13	4
<i>Fee to him and clerk</i>	2	4	6
Attending him	0	6	8
— 17. Attending instructing witnesses to qualify (each)	0	13	4
(Two qualifying generally allowed.)			
Attending arranging with each witness to attend trial without subpoena	0	6	8
(If witnesses subpoenaed, usual charges for writing sheriff for and paid for subpoenas and services.)			
(Notice to produce and inspect and attend- ances, if any, as in actions.)			
Instructions for brief (according to the number of witnesses, &c.).			
Drawing same (at per folio)	0	1	0
Brief copies of all necessary documents (at per folio)	0	0	4
Copy plans to accompany	—		
Attending the town clerk and making arrangements for the witnesses for the corporation to see the property	0	13	4
<i>Fee to counsel with brief and clerk</i>	—		
Attending him therewith	0	13	4
<i>Conference fee and clerk</i>	1	6	0
Attending conference	0	13	4
Instructions to counsel for view	0	6	8
<i>Paid his fee and clerk</i>	5	10	0
Attending him	0	6	8
June 18. Attending hearing when verdict given for claimant with 2,000 <i>l.</i> damages	3	3	0
Drawing bill of costs and copies (at 1 <i>s.</i> per folio).			
Attending taxing	0	13	4
<i>Paid</i>	—		
Letters, messengers, &c.	2	2	0
<i>Paid witnesses</i>	—		

6. *Claimant's Costs on Assessment before an Arbitrator of Compensation for Lands taken.*

Between Messrs. W. & J.

and

The ——— Railway Company.

	£	s.	d.
1900. June 6. Instructions	2	2	0
Attending Mr. W. obtaining his signature to appointment of arbitrator	0	6	8
The like attendance on Mr. J.	0	6	8
Copy appointment, to keep	0	3	4
— 8. Attending Mr. W. as to further information required	0	6	8
Writing Messrs. B. & Co. with appointment of arbitrator	0	3	6
— 9. Attending Mr. W. two hours, going through maps and plans and other matters to enable us to advise him as to the evidence to be produced .	0	13	4
— 19. Writing Messrs. W. & J. informing them of appointment made by Mr. L.	0	3	6
— 26. Attending Messrs. B. & Co. with regard to the postponement of the hearing in consequence of the illness of one of the parties	0	6	8
— 28. Writing Messrs. W. & J. with further ap- pointment, the first one having been postponed to suit Messrs. B. & Co.	0	5	0
Attending Mr. W., arranging with him to take the necessary steps with regard to the adjournment and the attendance of the requisite parties ..	0	6	8
Writing Mr. L. to know if he could attend and give evidence at the adjourned appointment ..	0	3	6
Writing Mr. W. informing him of the adjourned appointment	0	3	6
July 11. Writing Mr. L. to call here at 2.30 to-morrow	0	3	6
Writing Messrs. W. & J. to meet him	0	3	6
— 12. Attending Mr. W. and Mr. L. conferring at length as to the points to be met and the evidence to be provided	1	1	0
Attending Mr. L. to confer with him on the subject of further evidence	0	13	4
Attending Mr. J. reporting what we had done in reference to engaging surveyors, and stating that			

J.

I I

	£	s.	d.
we were waiting for Mr. L.'s report, which how- ever could not be sent until he was furnished with certain materials by Mr. W.	0	6	8
Writing Mr. F. informing him that the arbitrator had fixed Thursday next to take this case, and requesting him to attend	0	3	6
— 17. Attending Mr. L. at W. requesting him to furnish his report, and as to meeting Mr. P. . .	0	6	8
Attending Mr. W. twice this day, conferring as to the evidence, &c.	0	13	4
Attending Mr. E.'s clerk informing him that Mr. E.'s attendance would be required on the 19th, and making appointment for him to meet the other surveyor on the 18th	0	6	8
Writing Mr. W. to come here for us to take his proof.	0	3	6
Writing Mr. F. to the like effect	0	3	6
— 18. Attending Mr. H.'s clerk, when he stated that Mr. H. could not certainly attend, and afterwards attending Messrs. B. & Co. thereon, when they proposed a postponement, as Mr. S., their counsel, could not attend; and conferring on the matter	0	6	8
Attending Mr. J. as to the witnesses to be called in support of measurements, &c., and advising whom he should have in attendance	0	6	8
Instructions for brief	10	10	0
Drawing same (1s. per fo.)	10	8	0
Two brief copies for counsel (4d. per fo.)	6	18	8
Two sets of ten plans referred to in various docu- ments, to annex to briefs	10	10	0
<i>Paid Mr. H., Q.C., with brief and clerk</i>	<i>53</i>	<i>16</i>	<i>6</i>
Attending him	0	13	4
<i>Paid him consultation fee, and clerk</i>	<i>2</i>	<i>7</i>	<i>0</i>
Attending him	0	6	8
<i>Paid to Mr. C. R. with brief, and clerk</i>	<i>27</i>	<i>0</i>	<i>0</i>
Attending him	0	13	4
<i>Paid him consultation fee, and clerk</i>	<i>1</i>	<i>3</i>	<i>6</i>
Attending him	0	6	8
Attending consultation	0	13	4
— 26. Attending reference at W., witnesses examined, and case completed on each side; self and clerk .	5	5	0
Letters, messengers, and incidental expenses . .	3	3	0

COSTS USUALLY ALLOWED.

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	£	s.	d.
Drawing bill of costs and copies	3	0	0
Attending settling costs	2	2	0
<i>Paid surveyors and other witnesses</i>	—		

7. *Costs of an Arbitration under the Lands Clauses Consolidation Acts, the matter referred by agreement to a single Arbitrator, the reference conducted without Counsel, the claim and amount awarded each exceeding £30,000.*

Between A. B.

and

The ——— Canal Company.

19—.	June 20.	Instructions to proceed with reference	£	s.	d.
			0	13	4
		Perusing and approving draft agreement (folios 8)	0	8	0
		Fair copy to keep	0	2	8
		Writing the company's solicitors therewith approved	0	3	6
		Engrossing agreement	0	2	8
		Attending A. B., obtaining his signature thereto..	0	6	8
		Attending exchanging agreements	0	6	8
July 2.		Attending A. B., obtaining his signature to agreement signed by the company, that the arbitrator might have the document signed by both parties.. .. .	0	6	8
Aug. 1.		Attending the arbitrator with agreement and to obtain appointment to proceed, when he suggested we should communicate with company's solicitors before he fixed same	0	6	8
		Writing them accordingly, and if appointment for September — and following days would be convenient for them	0	3	6
— 10.		Upon receipt of reply from company attending the arbitrator, when he gave appointment to proceed for — October and following days ..	0	6	8
		Notice to the company's solicitors informing them thereof, copy and service	0	4	0
		Writing A. B., informing him of the appointment	0	3	6
Sept. 25.		Attending at ———, engaging room for arbitration	0	6	8

	£	s.	d.
Notice thereof to the company's solicitors, copy and service	0	4	0
Writing the arbitrator informing him	0	3	6
— 29. Writing the company's solicitors in reply as to days arbitrator would proceed with the arbitration after the first week, and acknowledging receipt of correspondence they had had with him	0	3	6
Perusing the correspondence	0	3	4
Oct. 5. Perusing notice to produce served on behalf of the company	0	6	8
Drawing notice to produce	0	5	0
Service thereof	0	2	6
— 6. Writing plaintiff's solicitors in reply and enclosing a requested duplicate notice to produce with memo. of acceptance of service indorsed thereon, and signing memo.	0	3	6
Instructions to appear before the arbitrator to submit and argue the claims of A. B., necessitating the examination of the details of the claims, perusal of voluminous correspondence and papers, numerous attendances on witnesses, &c., and settling proofs, correspondence, and other professional labour incidental to the arbitration	52	10	0
Oct. 7. Drawing proofs of the witnesses (folios 300)	15	0	0
Fair copy	5	0	0
Making copy of the correspondence for the arbitrator (folios 470)	7	16	8
Copy for use on the arbitration	7	16	8
— 8. Attending the arbitration conducting the proceedings (12 days at 5 <i>l.</i> 5 <i>s.</i> per diem)	63	0	0
Writing the company's solicitors with reference to plans, explaining what they wanted	0	3	6
Nov. 10. Writing the arbitrator's solicitors with original contract for purpose of drawing up award, and thereon	0	3	6
Writing the company's solicitors thereon, and explaining that we had sent the original contract to the arbitrator's solicitors	0	3	6
Dec. 5. Attending the arbitrator's solicitors paying them £———— and taking up award (a)	0	6	8

(a) The company should have been required to take this step (*supra*, pp. 133, 134).

COSTS USUALLY ALLOWED.

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	£	s.	d.
Perusing award	0	6	8
Copy of award for company's solicitors	0	4	0
Writing them therewith and asking for cheque for —————l.	0	3	6
<i>Paid the ——— Company for use of room for arbi- tration</i>	—		
Drawing bill of costs and copy for the company's solicitors (folios 26)	1	6	0
Attending obtaining appointment to tax	0	3	4
Notice of appointment, copy and service	0	4	0
Attending taxing	0	13	4
Letters and incidental expenses	1	1	0
<i>Witnesses :—</i>			
<i>A. B., expenses (12 days)</i>	4	10	0
<i>Mr. ———, engineer</i>	12	12	0

**8. Landowner's Costs of Special Case stated by Arbitrator
under the Lands Clauses Acts, on Hearing in Divisional
Court (a).**

Trinity Sittings, 19—.

	£	s.	d.
Aug. 14. Instructions on special case stated by arbitrator, including perusal of award and case annexed	1	1	0
Copy award and case for printers (folios 79) ..	1	6	4
Examining and correcting proof	0	13	2
<i>Paid printers' charges</i>	—		
Attending arbitrator to obtain his signature to a print of the case, when he promised to examine and sign it	0	6	8
Attending setting down case for argument.. ..	0	6	8
<i>Paid setting down</i>	2	0	0
<i>Paid filing</i>	1	0	0
Notice of filing, copy and service	0	4	0
Two prints of award and special case for the Court (folios 79)	1	6	4

(a) See *supra*, p. 131.

	£	s.	d.
Attending to deliver copies for the Court	0	6	8
Term fee	1	1	0

Michaelmas Sittings.

Attending during the sittings watching the cause list	0	13	4
Oct. 24. Instructions for brief, including perusal of award and special case and transcript of shorthand notes of evidence before the arbitrator, and attending Mr. ———, civil engineer, obtaining his assistance on technical points	2	2	0
Drawing brief (observations, &c.) (folios 32) ..	1	12	0
Fair copy	0	10	8
Copy of each of following documents to accompany :—			
Transcript of shorthand notes of the evidence of Mr. ——— (folios 149)	2	9	8
The like of Mr. ——— (folios 219)	3	13	0
The like of Mr. ——— (folios 110)	1	16	8
<i>Fee to Mr. ——— therewith and clerk</i>	27	0	0
Attending him	0	13	4
<i>Conference fee to him and clerk</i>	1	6	0
Attending to appoint conference	0	3	4
Attending conference	0	13	4
Dec. 12. Attending Court, but case not reached ..	0	10	0
Writing arbitrator requesting him to allow his clerk to hand the plans and other exhibits to the associate on the hearing	0	3	6
19—. Jan. 6. <i>Refresher fee to Mr. ——— and clerk</i>	1	3	6
Attending him	0	3	4
Term fee	1	1	0

Hilary Sittings, 19—.

Jan. —. Attending during sittings searching position of case in list	0	13	4
— 16. Attending Court all day, case in list, but not reached	0	10	0
— 17. Attending Court, case in list, but on application directed to stand out of the list until next week, to suit leading counsel's convenience ..	0	13	4

COSTS USUALLY ALLOWED.

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	£	s.	d.
<i>Conference fee to Mr. ——— and clerk</i>	1	3	6
Attending to appoint	0	3	4
Attending conference	0	13	4
Attending shorthand writer instructing him to take a note of the proceedings, as the town clerk of ——— desired it	0	6	8
— 23. Attending Court, case reached and part heard	2	2	0
— 24. Attending Court, case finished and judg- ment given in favour of urban district council ..	2	2	0
Attending to draw up rule	0	6	8
<i>Paid</i>	1	0	0
Copy and service	0	3	6
Copy to keep	0	1	0
<i>Paid moiety of shorthand writer's charges</i>	1	1	0
Drawing bill of costs and copies (folios 40) ..	2	0	0
Attending obtaining appointment to tax	0	3	4
Notice to tax, copy and service	0	4	0
Attending taxation	1	1	0
Term fee (agency)	1	1	0
Letters and postages	1	1	0

9. Respondent's Costs on Appeal Dismissed with Costs.

IN THE COURT OF APPEAL.

Between The ——— Corporation
and
The ——— District Council.

Hilary Sitzings, 19—.

	£	s.	d.
Feb. 6. Instructions on appeal	0	13	4
Copy notice of appeal	0	1	4
Attending searching if appeal set down	0	3	4
Attending town clerk of ———, who said that having regard to the pending discussions the Corporation desired the appeal to be kept out of the paper until after (date), and it was arranged we should instruct counsel to apply to the Court accordingly	0	6	8

Attending Messrs. ———, when they informed us they were instructed to concur in an application for postponement, and later when they informed us counsel for petitioner would apply at 2 p.m. . .	£	s.	d.
	0	6	8
Instructions to counsel to apply	0	6	8
<i>Fee to Mr. ——— and clerk</i>	2	4	6
Attending him	0	6	8
— 12. Attending Court when application made and appeal was directed to stand out of list generally and to be restored on application	0	13	4

Easter Sitzings.

March 15. Notice to the corporation solicitors of intention to apply for the appeal to be restored to the list for hearing, copy and service	0	4	0
Attending the town clerk, who said the corporation were about to have a meeting, and he desired we should defer our threatened application till after meeting, and we undertook to leave it over until Tuesday morning next	0	6	8
Attending Messrs. ———, when they gave us a consent to the case being restored to the list for the first day of Trinity Sitzings on which this class of case was taken	0	6	8
Instructions to apply to restore case to list for hearing	0	6	8
<i>Fee to Mr. ——— and clerk</i>	2	4	6
Attending him	0	6	8
May 20. Writing Messrs. ———, informing them counsel would apply to have the appeal restored to the list on the first day on which the Court would sit to hear <i>ex parte</i> motions	0	3	6
— 25. Attending Court when application made and appeal directed to be restored to the list for the Trinity Sitzings	0	13	4
— 26. Instructions for brief on appeal	1	1	0
Drawing same (folios 48)	2	8	0
Two copies for counsel	1	12	0
The like order of ——— January, 1895, appealed from	0	2	0
The like notice of appeal (folios 4)	0	2	8

COSTS USUALLY ALLOWED.

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Copy of each of the following documents to accompany Mr. ———'s brief :—	£	s.	d.
Memo. of appointment of arbitrator (folios 8) ..	0	2	8
Print of award of arbitrator and special case (folios 79)	0	13	2
Transcript of shorthand notes of evidence of scientific witnesses given before the arbitrator (folios 368)	6	2	8
Correspondence (folios 470)	7	16	8
Plans showing connections proposed to be made by the respondent council with the ——— outfall sewer	1	1	0
Ordnance map, and marking and colouring same to show the northern portion	0	10	0
— 29. <i>Fee to Mr. ———, Q.C., with brief and clerk</i>	53	16	6
Attending him	0	13	4
Attending to appoint conference	0	6	8
<i>Paid fee</i>	2	7	0
<i>Fee to Mr. ———, with brief</i>	32	10	0
Attending him	0	13	4
<i>Consultation fee to him and clerk</i>	1	3	6
Term fee	1	1	0

Trinity Sittings.

June 6. Attending consultation	0	13	4
Attending Court all day, case in list but not reached	0	13	4
— 17. Attending Court, case reached and part heard, and adjourned till to-morrow	2	2	0
— 18. Attending Court when case proceeded with, arguments closed and judgment reserved	2	2	0
July 6. Attending Court when judgment given and appeal dismissed	0	13	4
— 7. Attending to draw up order	0	6	8
<i>Paid</i>	1	0	0
Two copies order	0	2	0
Service thereof	0	2	6
Drawing judgment	0	6	8
Attending to sign judgment	0	6	8
<i>Paid</i>	1	8	4
Drawing costs and copies	1	10	0
Attending taxing	1	1	0
Term fee	1	1	0
Letters, &c.	1	1	0

THE LIGHT RAILWAY RULES, 1896.

Fees.

RULE 36. Before lodging any application with the commissioners a fee of 50% must be paid by the promoters to the Board of Trade by cheque in favour of an Assistant-Secretary of the Board of Trade.

THE LIGHT RAILWAYS (COSTS) RULES, 1898.

*Rules dated May 27th, 1898, under the Light
Railways Act, 1896, s. 13.*

The following rules, and the scales of costs contained therein, shall apply to the allowance and taxation as against a light railway company of all costs and charges of a claimant in an arbitration :—

1. Where the compensation awarded by the arbitrator to the claimant does not exceed the sum specified in the first column of the Scale No. 1 hereunder contained, the sum payable to the claimant for his costs of the arbitration shall be the sum specified in the second column of such scale, which sum shall include and cover all disbursements, except for the attendances of witnesses, for which attendances the sums specified in the third column of such scale shall be allowed. No charge for briefs to, or attendance of, counsel shall be allowed.

2. Where the compensation awarded by the arbitrator exceeds the sum of three hundred pounds, but does not exceed the sum of five hundred pounds, the costs and charges of the claimant in the arbitration shall be allowed and (if necessary) taxed, in accordance with the provisions of the Scale No. 2 hereunder contained, and no other costs or charges other than those specified in such scale, or allowed in accordance therewith, shall be allowed.

3. Where the compensation awarded by the arbitrator exceeds the sum of five hundred pounds, the costs and charges of the claimant in the arbitration shall be taxed and allowed in accordance with the provisions of the Scale No. 3 hereunder contained, and no other costs or charges other than those specified in such scale, or allowed in accordance therewith, shall be allowed.

4. For the purpose of ascertaining the scale on which the costs of the claimant in the arbitration are to be allowed, the amount of compensation awarded by the arbitrator shall comprise and include the sum or sums awarded by the arbitrator in respect of any lands or interest in lands taken for or injuriously affected by the execution of works under the Act, or any order made under the Act, and also all such amounts (if any) as may be deducted by the arbitrator in arriving at such sum or sums in respect of the permanent increase of value to the remaining and contiguous lands and hereditaments of the same proprietor, and the expenses of any accommodation works which may be prescribed by the award or which the light railway company may have agreed to construct for the protection or advantage of the claimant; and the arbitrator shall, if required so to do by either party to the arbitration, certify the amounts of such deductions and expenses.

5. So much of the first schedule to the Arbitration Act, 1889, as provides that the arbitrator may award costs to be paid as between solicitor and client, shall not apply to an arbitration to which these rules apply. In any case in which the arbitrator taxes or settles the amount of costs to be paid to the claimant in the arbitration, these rules and the scales hereunder contained shall apply to and govern such taxation and settlement of such costs by the arbitrator.

6. These rules and the scales of costs contained herein shall not apply to the fees or remuneration properly payable to or charged by the arbitrator, which fees, if and when paid by the claimant, shall be recoverable by him from the party who is directed or liable to pay the same.

7. In these rules and scales of costs—

- (1.) “The Act” means the Light Railways Act, 1896.
- (2.) “The arbitrator” means an arbitrator appointed under the thirteenth section of the Act.
- (3.) “Taxing officer” includes the arbitrator when costs are taxed and settled by him.
- (4.) “Light railway company” has the same meaning as such expression has in the Act.

8. These rules shall commence and come into operation on the 27th day of May, 1898, and may be cited as the Light Railways (Costs) Rules, 1898.

Scale No. 1.

Scale of fixed costs where the compensation awarded does not exceed 300*l.*:—

Compensation Awarded.	Amount of Costs other than for Witnesses.	Costs of Attendance of Witnesses.
	£ s. d.	£ s. d.
Any sum not exceeding fifty pounds	3 3 0	2 2 0
Any sum exceeding fifty pounds, but not exceeding one hundred pounds	5 5 0	3 3 0
Any sum exceeding one hundred pounds, but not exceeding three hundred pounds:— For every fifty pounds or part of fifty pounds exceeding one hundred pounds the following sums in addition to those prescribed for compensation which ex- ceeds fifty pounds	2 2 0	1 1 0

Scale No. 2.

Costs where the compensation awarded exceeds 300*l.*, but does not exceed 500*l.*:—

- (a.) The amount payable to the claimant for the costs of the arbitration shall be the sum of 20*l.*, which sum shall include all charges and disbursements of every kind, except those hereinafter specially mentioned.
- (b.) In addition to the said sum of 20*l.*, there shall be allowed to the claimant the charges and expenses of and incurred in obtaining the evidence and attendance of one expert witness as to the value

of the claimant's land, or interest in land, or the amount of compensation to which the claimant is entitled: which charges and expenses shall be taxed and allowed in accordance with the provisions of Scale 3, hereinafter contained.

- (c.) If counsel is employed by the claimant, there shall be allowed to him, in addition, for preparing and delivering briefs to and obtaining the attendance of counsel, such fees as, having regard to all the circumstances of the case, the taxing officer shall think fit.

Scale No. 3.

Scale of costs and allowance where the compensation exceeds five hundred pounds :—

1. Instructions for claim and attendances on owner or claimant in respect thereof	£	s.	d.
	1	1	0
2. Correspondence and attendance on the Light Railway Company's solicitor thereon, including drawing and copy claim	1	1	0
3. Attendances on them agreeing upon arbitrator or that the arbitrator should be appointed by the Board of Trade	0	13	4
4. Attending on each witness (of two witnesses) instructing him to qualify and subsequently perusing his report, or if the arbitrator is a surveyor on one witness only	0	13	4
5. Attending on the arbitrator and on the company's solicitor arranging appointment for the day of hearing	0	13	4
6. Notice to each witness to attend	0	5	0
7. If a view is reasonably necessary, attendances on arbitrator and company's solicitor arranging for view	0	13	4
8. Attending view with them	3	3	0
9. <i>Paid travelling expenses</i>	—		
10. If counsel employed, instructions to counsel to attend view	0	6	8
11. <i>Paid his fee and clerk</i>	5	10	0
12. Instructions for attending before the arbitrator and to conduct the claimant's case	2	2	0
13. If counsel employed in lieu of last item, instructions for brief	2	2	0

14. Drawing case and minutes of evidence, at per folio, 1s.; and if counsel attending, brief copy for counsel, at per folio, 4d.	£	s.	d.
		—	
15. <i>Paid counsel's fee</i>		—	
16. Attending him	0	6	8
17. <i>Paid counsel's conference fee</i>	1	6	0
18. Attending conference	0	13	4
19. Solicitor attending reference and conducting case, case completed on each side (solicitor and clerk)	5	5	0
20. If reference not held in town in which the solicitor carries on business, for hotel expenses of solicitor	1	1	0
Ditto ditto of clerk	0	15	0
(And for travelling expenses, the sum actually paid.)			
21. If reference not concluded, for each subsequent day the same charges.			
22. If counsel in attendance, solicitor attending each day on reference	3	3	0
23. And if not in solicitor's town, for hotel expenses (and travelling expenses actually paid) ..	1	1	0
24. <i>Paid witnesses</i> (according to the scale in use by the Masters in the Queen's Bench Division).		—	
25. Drawing bill of costs and copy for taxing, at per folio 8d.		—	
26. Copy for the railway company's solicitor, at per folio 4d.		—	
27. Notice of taxing	0	4	0
28. Attending taxing	0	13	4
29. <i>Paid taxing</i> (the fee payable in the Queen's Bench Division on taxing costs)		—	
30. Letters and messengers	1	1	0
31. In agency cases, for correspondence between solicitor and London agent	1	1	0

In other than ordinary cases the taxing officer may increase or diminish any of the above charges if for any special reasons he shall think fit.

10. *Claimant's Costs of Arbitration. (Arbitrator a Surveyor.)*

In the Matter of the ——— Light Railway Order, 1898.

In the Matter of an Arbitration

Between A. B., Claimant,
and

The ——— Light Railway Co., Ltd., Respondents.

The costs and charges of the Claimant in above arbitration.

Award, 1,200*l*.

19—. May 6. Instructions for claim and attendances on claimant in respect thereof	£	s.	d.
	1	1	0
— 17. Drawing and copy claim and correspondence with and attendances on Messrs. ——— & Co., the Light Railway Co.'s solicitors thereon ..	1	1	0
June 3. Attendances and correspondence as to appointment of arbitrator, and same eventually appointed by the Board of Trade	0	13	4
Attendances on surveyor instructing him to qualify and subsequently perusing his report	0	13	4
July. Attendances on arbitrator and correspondence as to time and place of hearing	0	13	4
The like attendances and arranging for view ..	0	13	4
Notices to claimant and witness to attend	0	10	0
Sept. Attendances on the arbitrator and correspondence fixing new date to view	—		
Oct. Attending view with arbitrator and with company's solicitors at ———	3	3	0
<i>Paid travelling and hotel expenses. (Land three miles from ——— station and view held at 9.45 a.m.)</i>	<i>1</i>	<i>10</i>	<i>0</i>
Instructions for brief	2	2	0
Drawing same (folios 60)	3	0	0
Fair copy	0	15	0
Copy notice to treat	0	4	0
Copy plan therewith	0	5	0
Copy schedule of claim	0	2	0
<i>Fee to Mr. ———, with brief and clerk</i>	<i>5</i>	<i>10</i>	<i>0</i>
Attending him	0	6	8
<i>Paid conference fee</i>	<i>1</i>	<i>6</i>	<i>0</i>
Oct. 9. Attending conference	0	13	4

	£	s.	d.
— 10. Attending hearing at Westminster Palace Hotel, case part heard, and adjourned to 13th Oct. (engaged all day)	3	3	0
<i>Refresher fee to counsel</i>	3	5	6
Attending him	0	6	8
— 13. Attending adjourned hearing when same concluded and award reserved	3	3	0
Drawing costs and copy for Railway Company's solicitors	0	10	0
Attending obtaining name of taxing master, lodging bill and obtaining appointment	0	3	4
Notice to tax, copy and service	0	4	0
Attending taxing	0	13	4
Letters, messengers, &c.	1	1	0
<i>Paid witnesses</i>	—		
<i>Paid taxing</i>	—		

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